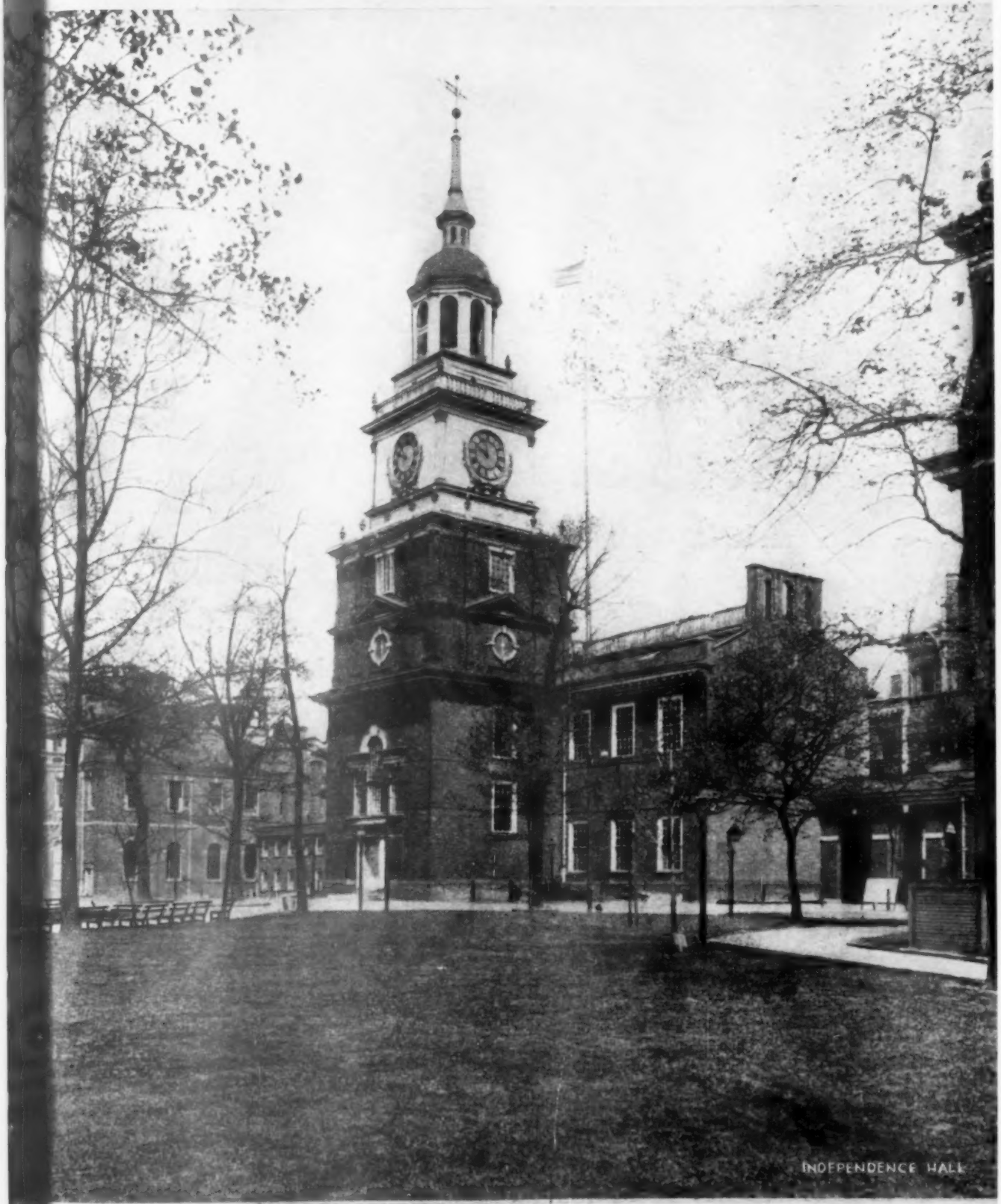
AMERICAN BAR ASSOCIATION JOVRNAL

AUGUST, 1940



INDEPENDENCE HALL

PHILADELPHIA MEETING, SEPT. 9-14

The Cowboy has no Monopoly on Romance!

There are some men, the cowboy, the aviator, the sailor, for example, whose work seems more romantic and interesting than the general run of jobs.

But these men have no monopoly on romance. There are enough stories of human interest, pathos and self sacrifice in the memories of any one of our veteran agents to fill a book.

The aviator and the sailor contend with the elements; the cowboy handles animals; but the insurance salesman comes face to face with the most interesting thing in the world: human nature. He steers men in the direction they ought to go, helping them to achieve their ambitions, in spite of obstacles and temptations. He renders the greatest service a man can give his fellow men; he helps them to help themselves.

TABLE OF CONTENTS

Published Monthly by American Bar Association at 1140 North Dearborn Street, Chicago, Illinois
Entered as second class matter Aug. 25, 1920, at the Post Office at Chicago, Ill., under the Act of Aug. 24, 1912.
Price: Per Copy 35c; Per Year, $3; To Members, $1.50; To Students in Law Schools, $1.50

AMERICAN BAR ASSOCIATION
AUGUST 1940 JOVRNAL VOL. XXVI NO. 8

CURRENT EVENTS

Lawyers and National Defense

THE Federal Bureau of Investigation has issued a new call for lawyers willing to help combat the "Fifth Column." Present plans call for putting agents on the pay roll at $3,200 a year until the F. B. I. staff has been built up to the point where it is able to cope with the avalanche of work growing out of the demand for investigation of persons suspected of subversive activities.

Congress has authorized the appointment of 500 additional agents in connection with the National defense program and about 400 of these jobs are earmarked for lawyers, inasmuch as the F. B. I. takes on four attorneys to every accountant.

Lawyers Offer Services

The New York State Bar Association recently created a committee to assist the Federal Government in obtaining the services of members of the bar in that state for national defense preparations.

Jackson A. Dykman, of Brooklyn, was appointed chairman of the committee. Other committee members are Dean Paul Shipman Andrews and Frank C. Love, Syracuse; Samuel E. Aronowitz, Albany; William J. Donovan, John G. Jackson, Basil O'Connor and Cornelius W. Wickersham, New York; Moses G. Hubbard, Utica; Evan Hollister, Buffalo, and Bernard W. Kearney, Gloversville.

The Bronx County Bar Association, expressing its desire to cooperate with other lawyers' organizations unanimously passed the following resolution:

"Whereas, the crisis in world affairs has so involved the Government of the United States as to necessitate immediate and important steps in making secure the defense of our liberty and ideals; and

"Whereas, we are particularly fitted by training and experience and duty-bound to our oath as lawyers and obligations as citizens to do all in our power to safeguard our basic freedom; and

"Whereas, the protection of these rights depends in such large measure upon a full, adequate and coordinated National defense, the development of which is now engaging our Government on all fronts of our National life;

"Now, therefore, be it resolved that the President appoint a special committee to act in cooperation with similar committees of other bar associations to the end that the services of members of this association and of all lawyers may be effectively utilized in the development and execution of the National defense program."

Ohio Lawyers Reject State Bar Integration Plan

The question of bar integration was recently submitted by mailed ballot to the membership of the Ohio State Bar Association. Only 2,736 of the upwards of 4,700 members returned the ballots. Of those members voting, 1,134 favored integration and 1,602 opposed it. The issue of integration in Ohio will probably be dead for many years now.

Research in Judicial Administration

A SPECIAL Committee on Research in Judicial Administration has been organized to sponsor authentic research in that field. In the July issue the JOURNAL called attention to this important subject, and specifically to the need for better judicial statistics, in a discussion of "Volume of Judicial Decisions." It is appropriately to be considered one of the facets of public administration.

Judge Charles E. Clark of the Second Circuit Court of Appeals, former dean of the Yale Law School, has accepted the chairmanship of the committee, which held its first meeting in Washington on May 17, and proposes to meet again in Philadelphia at the time of the ABA meeting in September.

Other members of the committee are:

Henry P. Chandler, Director, Administrative Office of the United States Courts.

Judge W. Calvin Chesnut, Baltimore, Chairman of the Section on Judicial Administration, American Bar Association.

Judge Edward R. Finch, Vice-Chairman, National Conference of Judicial Councils.

Judge Bolitha J. Laws, U. S. District Court for the District of Columbia.

Professor Leon Marshall, American University.

Arthur T. Vanderbilt, former President, American Bar Association.

Bethuel M. Webster, President, New York Law Society.

The reporter draftsman is Charles U. Samenow, author of the American Law Institutes' study on the Business of the Federal Courts. The committee invites the submission of topics to be included in the outline. Mr. Samenow may be addressed at Room 5311, North Interior Building, Washington, D. C.

Notice by the Board of Elections

AS A RESULT of the mail ballots cast by members of the Association in the Territorial Group (Alaska, Canal Zone and Philippine Islands), the Board of Elections announces that L. Dean Lockwood of Manila, P. I., has been elected State Delegate from that jurisdiction. Mr. Lockwood is elected for the vacancy in the term which will expire at the adjournment of the 1941 Annual Meeting. Ballots were mailed to 76 members in good standing in the Territorial Group. Of the 25 ballots returned, 22 votes were cast for Mr. Lockwood.

This announcement did not appear with the original announcement of the State Delegate election in the July JOURNAL because the polls were not closed for receipt of ballots from the Territorial Group until July 5, 1940.

EDWARD T. FAIRCHILD,
Chairman, Board of Elections.

Hatch 'Clean State Politics' Bill Approved by President

"PRESIDENT ROOSEVELT on July 20 signed the Hatch "clean State politics bill," curbing pernicious political activity by some 250,000 state and municipal workers paid from Federal funds and imposing drastic limitations on National campaign expenditures.

The bill is an amendment of the original Hatch Act, barring Federal employees from political activity. It provides:

1. A prohibition against political activity on the part of state and local employees paid in whole or in part with Federal funds.

2. A limitation of $3,000,000 on the annual expenditures of any political committee, including the Republican and Democratic National Committees. The Republican National Committee spent $8,000,000 during the 1936 campaign and the Democratic National Committee $6,000,000.

3. A limitation of $5,000 on the amount any person or organization may contribute to National committees for campaign purposes. Local and state committees, under a last-minute amendment, may both receive and dispense contributions in excess of that amount.

4. A ban on the purchase of goods, commodities, or advertising when the funds go for political purposes. This prohibits such money-raising devices as the Democratic campaign books, which for several years have raised a considerable proportion of Democratic National Committee funds.

When Mr. Roosevelt signed the original Hatch Act a year ago he declared that similar restrictive provisions should be made applicable to state employees. The measure becomes effective immediately."—*The Legal Intelligencer (Philadelphia), July 22, 1940.*

Law Lists Approved

AT A MEETING of the Special Committee on Law Lists held in Chicago in June, the 1940-41 edition of "Insurance Claim Who's Who" was approved. This law list is published by Claim Adjusters Association, Inc., 175 West Jackson Blvd., Chicago, Illinois. Mr. James J. Manion is president and has complete charge of the publication. "Insurance Claim Who's Who" is a list of insurance defense attorneys.

Approval was given to the 1940 edition of "American and Latin American Directory" (Registro Profesional de Abogados de Estados Unidos de America) published by the American and Latin American Legal Directory Company, Inc., 225 W. 34th Street, New York City. The publication will be in charge of Mr. Saul R. Levin, of Detroit, and Messrs. Edwin C. Neal and Benjamin R. Tulupman, of New York City. The latter two men are also interested in the Wright-Holmes Corporation, which publishes the Wright-Holmes Law List.

This list will include representative North American lawyers who are interested in international law, general and civil law, public utilities, tariff, customs and foreign patents, and will be distributed principally in the Latin and South American countries.

Approval was given by the Committee to the 1940 edition of "Classified Register of Members" of the Illinois State Bar Association, Mr. R. Allan Stephens, Secretary, First National Bank Building, Springfield, Illinois.

Washington Letter

Washington Warms Up

WITH summer heat becoming intensified, the required courses which Congress must run before adjournment seem to have multiplied. The needs and dangers of the country may keep them on the job for sometime yet, perhaps until September. Many of the members feel that, under all the conditions, their home work, to-wit, the little detail of getting themselves elected again, can be accomplished in a month to six weeks of intensified personal campaigning.

Among the prospective legislation items which, at this time, seem destined for attention are: Further Defense Plans, including the Burke-Wadsworth Bill providing compulsory service on a selective basis; Johnson Act amendments to remove the impediments to credits to nations still owing us debts from the last war; Provisions for Registration with the Attorney General of organizations subject to foreign control which engage in political or military activities; the Logan-Walter Bill to provide judicial review for decisions of administrative agencies; Wage-Hour Law Amendments which might postpone the decrease of hours, in October, from 42 to 40 hours per week; National Labor Relations Act Amendments which already have received much attention; and the Investment Trust Bill to provide registration and regulation of investment companies and investment advisers.

Administrative Law Hearings

The oral hearings of the Attorney General's Committee on Administrative Procedure have been completed although the Committee still is receiving statements in writing. The final report which is to be finished this fall is in course of preparation but it is too soon to determine when it may be completed. At the July hearings there appeared a number of members of the American Bar Association, although only one who spoke for the Association. Colonel O. R. McGuire, Chairman of the Special Committee on Administrative Law, presented the Association's views.

In the course of notifying those who might be interested of the hearings, the Committee had mailed approximately 110,000 cards. Special invitations to appear were sent to members of groups who, it was thought, might have a special interest in the subject. This included the Chairmen of the Sections and Committees of the American Bar Association. Three of these men appeared but gave only their personal views. They were George M. Morris, Chairman of the Taxation Section; Robert E. Hardwicke, Chairman of the Mineral Law Section; and Albert MacC. Barnes, Chairman of the Special Committee on Customs Law. Among the many other witnesses who appeared to give the Committee the benefit of their views were Louis G. Caldwell, Chairman of the District of Columbia Bar Association's Committee on Administrative Procedure; and Clarence A. Miller, past president of the Association of Interstate Commerce Commission Practitioners.

The report of the Committee's June hearings has been issued and consists of three pamphlet volumes, about 500 pages in all. It is estimated that the report of the July hearings will be more than twice that large. Transcripts may be purchased from the reporter, Ethel E. Fisher & Associates, Inc., 304 Albee Bldg., Washington, D. C. The cost is twelve and one-half cents per page for the full hearings, or seventeen and one-half cents per page for excerpts.

Only a small number of the monograph reports of the studies for the several agencies were available originally and requests for them came in so rapidly that it was impossible to fill some of them. Many of the monographs are no longer in stock. The first thirteen (listed in the June issue of the JOURNAL, p. 465, footnote 2) now are available through the Government Printing Office, Superintendent of Documents, at ten cents per copy. There will be no more of the monographs issued, the studies of that type having been completed.

THE LAWYER AND THE PUBLIC SERVICE*

By William O. Douglas
Associate Justice, United States Supreme Court

THIS occasion is a milestone in the history of the Texas Bar. The success of your efforts in integrating the bar of Texas is further evidence of your progressive outlook. The passage of your State Bar Act and the action taken by your Supreme Court under it have gone far to establish control of the bar by all of its members, rather than by a few.

You have brought about the self-organization of the whole bar, through rules drafted by a committee headed by your President and composed of lawyers elected at meetings held in each of your judicial districts. All these steps were under the supervision of your courts. Your State Bar organization now is truly democratic and representative. It includes all of the lawyers and not merely those who choose to join.

Back of this achievement lie fifty-eight years of activities by your former Bar Association—years rich in service rendered to your state and culminating in your State Bar Act. I join with you today in hailing those whose efforts and sacrifices made this current accomplishment possible. And as you turn to the future, I wish you success and satisfaction in your new plan to give your bar greater solidarity, to develop a wider usefulness, and to keep your organization closer to the rank and file of lawyers in their home districts.

A mere change in form of organization is of course not an end in itself. It is only an opportunity for new accomplishments. But it is clear from your resolute commencement that you desire to take full advantage of that opportunity.

The wider scope afforded your bench and bar under the State Bar Act, your high conceptions of citizenship, your progressive attitude, your record of constructive service assure this great organization of an important position of leadership in the years ahead.

Leadership by the bar has waxed and waned during the nation's history. At crucial moments in our national life the lawyers have imperishably writ their names on the national honor scroll. On innumerable occasions—some unnoticed, some dramatic—they have analyzed, briefed, argued and won the cause of Democracy and Christianity against tyranny and paganism. On the wings of free speech they have spread the democratic faith, the sanctity of the Bill of Rights, the virtues of representative government. They have rendered unstinting service to their government. And during many dark hours they have instilled hope and faith in the hearts of the free people of this Republic.

At other times many members of the bar became too preoccupied with pursuit of gain, too enmeshed in the business of clients, too enslaved to special interests to maintain their traditional position of public leadership. They had little time to give to city, state and nation. They frequently obstructed or passively resisted the processes of government. Too infrequently did they assist the state with their inventive genius. They advised clients but too often their counsel was heedless of modern concepts of social responsibility. By their words and deeds they did not share responsibility for making the democratic process dynamic, effective, and responsive to national needs. On such occasions they did not take the position of leadership which was theirs by tradition.

These periods have come and gone in our history. The country lawyer was probably less affected than others by this occasional indifference to the requirements of representative government. He was an integral part of the community in which he lived. The civic demands on him could not be readily avoided even had he wished it. His very position in town and country exacted responsibilities. At least in local affairs he retained a position of leadership. But elsewhere large portions of the bar abdicated their major responsibilities for the day-to-day functioning of democracy.

Today the nation is taking an inventory of its human and material resources. It is pledging those resources for the preservation of the democratic faith. It is engaged in an united endeavor to make representative government under our constitutional safeguards, immune from attack without or within by any enemy of democracy. That great national undertaking will make exacting demands on the bar. It will provide signal opportunities for assertion once more of the lawyer's leadership in times of national crisis.

Taking heed of the advice of Mr. Justice Holmes that "we need education in the obvious more than investigation of the obscure," reappraisal by the bar of some fundamental requirements of the time is most appropriate.

Democracy is not self-operating. It requires continuous effort. It is not simply an inheritable guarantee of rights and privileges. It must be won by each generation. Its existence cannot be taken for granted. It needs constant attention and care since it has bitter competitors in the world-market of ideas. Its efficacy, its power to survive depend on the capacity of the body politic to control and manage it with efficiency and dispatch. And the test of its validity is its ability to serve not special interests but the interests of all.

Democracy is not merely a system of government. It is a way of living. The practice of the democratic faith lies not in the mere observance of certain governmental rituals any more than mere churchgoing is true Christianity. Democracy, like Christianity, must be practiced in order to exist.

We hear much talk these days about the comparative inefficiency of democracy—talk that that inefficiency is a luxury. That is dangerously misleading.

*Address before Texas Bar Association, Annual Meeting, Fort Worth, Texas, July 6, 1940.

When men are strong in the democratic faith, democracy will be strong. When men are ready to suffer and die, not only for their fortunes or for their jobs, but for their democratic ideal, then democracy as a system of government will have lightning efficiency.

But the continuing vitality of the democratic ideal exacts a high standard of trusteeship from all Americans.

That trusteeship makes a particularly severe demand on the lawyer. Not only does he occupy a position of public trust. He is also a guardian, a champion of the system of law on which our representative government is founded. He is strong in the faith of our free institutions. He more than others knows the tortuous, sacrificial struggles which free people have endured and won. He more than others appreciates how necessary are the safeguards which surround our free institutions. With this knowledge and understanding of the origin and functions of our free institutions he has the unique resources for bold and wise leadership.

Too often have we assumed that the responsibilities of American citizenship end with the casting of a ballot and the payment of taxes. Too often have we looked to government only for personal benefits. Too often have we lacked the moral courage to make the sacrifices in time and energy and to practice the self-denial which alone can give great strength to any system of government.

In peace as well as war democracy, if it is to survive, demands our lives. It demands our lives in the sense that it requires our united efforts, our combined intelligence, our cooperative self-discipline, our devotion, our joint and individual sacrifices. To the extent that it does not obtain them, it loses vitality.

In easy going days vitality in democratic government might have seemed to be a matter of little consequence. But in critical days such as these, when democracy is meeting virulent competition, loss of vitality is costly and dangerous. The forces which weaken the responsibility and the responsiveness of the democratic process are strong allies of the foreign ideologies.

The foreign philosophers of force have won their successes not alone by complete mobilization of their own resources. Behind their victories lie also mobilization among their victims of the elements of fear, defeat, inaction, hesitation and discord.

As a result of these conquests, government of the people, for the people, and by the people is fast disappearing from the earth before our very eyes.

Democracy, we know, is rooted in the eternal truths of freedom of speech and press, freedom of worship, freedom of assembly, representative government, due process of law, equal protection of the laws, and freedom of opportunity. Today in many lands these great spiritual principles are attacked as corrupt, pernicious and degenerate. The state takes the place of God in the foreign philosophies of force and hate. In them there is no room for the inalienable rights of man proclaimed on this continent over 150 years ago.

The bar needs no education on these fundamentals. With a proper appreciation of the requirements of modern democratic government in its present world crisis, therefore, the bar can be a powerful and constructive force in the program designed to rededicate America in thought and action to the cause of free people.

More than mere oratorical efforts are required. The task which lies ahead calls for action in all walks of life by those who have a perception and understanding of the requirements of a dynamic democracy.

The acquisition of that perception and understanding calls for a return of the lawyer to public life and public service. Too many have retired from, or failed to become interested in, affairs of city, county, state, and nation. They have eschewed government because government to them connotes politics; and politics they reserve for those with more plebeian tastes.

But government is the most advanced art of human relations. It dispenses the various services which the complexities of civilization require or make desirable. It is designed to keep in balance the various competing forces present in any society and to satisfy the dominant, contemporary demands made upon it. As a result it serves a high purpose; it is the cohesive quality in civilization.

Its integrity, its capacity to act, its efficiency are today the very bulwarks of western civilization. Its performance in days to come will determine whether western civilization is eclipsed and democracy perishes; or whether the cause of free people throughout the world is regenerated on this continent.

In view of this great role which government serves, none can afford to be disdainful of it. Nor should we prate thoughtlessly about its ineptitude and incapacity.

Totalitarian leaders declare that they stand for law and order as opposed to the chaos and license of democracy. But they also stand for concentration camps and spies; for a whole people terrorized; for the destruction of justice, truth, tolerance, and reason; for the degradation of men and ideas.

Democracy, too, can be efficient and effective and without exacting that terrible cost. But first we must slough off old habits of treating democratic government with distrust and suspicion. It carries our most precious cargo—the hopes, the aspirations, the human and spiritual values of our free people. Such an institution needs the best of our inheritance—brains, character, energy, courage, imagination, and devotion.

When I speak of government I do not refer only to legislatures and courts. I refer also to all agencies, bureaus, commissions, administrators, and offices in town, county, state and federal governments. They are the ones with whom our citizens come most often in contact. They, as much as local courts and legislatures, determine the quality of work-a-day government. By their performance much of the efficacy of the democratic process is justly measured.

Participation in public service includes more than service in the ranks of local or national government. It embraces also contributions of time and effort to multitudinous public enterprises, to civic, state, or national causes, to community programs. In those unofficial undertakings lie much of the resourcefulness and strength of Democracy. It also includes the activities of moulding and guiding public opinion, and of making economic and social democracy effective by seeing to it that every citizen has a real stake in his country's program.

Here are great areas for public service. Here are outstanding opportunities for the legal profession to make current contributions to the democratic process.

Law administration and law enforcement are not automatic. Even the prosecutor exercises a broad discretion. The quality of administration will always be an important factor in effectuating the aims of the lawmakers. The caliber of the men or women who are members of the various agencies of government includ-

ing the school board, tax commission, corporation commission, public utility commission, and the like, determines the kind of government which is dispensed. We are, and so long as true democracy survives we will remain, a government of laws. But the human element cannot be completely legislated out of government any more than it can out of business and the professions.

The symbols by which we live are often apt to be outworn symbols—gathered from school books, from early teachings, from historic campaigns. That is especially true of the symbols of government. And lawyers are particularly susceptible to that weakness because their faces are turned so much to the past and to the precedents of a by-gone age. Lawyers search for certainty which, as stated by Mr. Justice Holmes, "generally is illusion." They too often long for the basic simplicity of an adolescent governmental organization. When legislatures in response to practical demands of dominant groups multiply the tasks of government, when they substitute the arbitral process for forensic trials, when they substitute the administrative proceeding for an archaic one, when they provide new remedies for old wrongs, lawyers are apt to cry out in protest. I refer, of course, not to genuine disputes on the merits of specific measures but to the emotional content of many objections to change.

What Mr. Justice Holmes said of judges is also true of lawyers. They "are more likely to hate at sight any analysis to which they are not accustomed, and which disturbs repose of mind, than to fall in love with novelties."

Too often do they assume a vested interest in the legal system. Too frequently do they expend their energies in striving to turn back the clock.

The bar's rebellion to basic change is apt to be more severe than that of any other group. Others are generally content and quiescent if the new system works. The bar is apt to see grave dangers in the alteration of any of the so-called ancient "absolutes." That is natural since none likes to have the rules changed—especially when the change requires his reeducation.

One practical answer is for the bar to turn its energies to the public service. If the various agencies of government—in state and nation—could command a few years of the lives of the best of our profession, great progress in the art of government and in an understanding of the problems of government by the bar would be made. The risk of future dry rot in government would be minimized. The necessary reeducation of the bar would take place. A sympathetic appreciation of the problems of government would be created. The bar would be in a position to assume a new constructive leadership. It would then be more apt to see government from the viewpoint of the organic whole rather than from the narrow angle of a client.

Then the lawyers as leaders of thought would be planning for the future rather than casting longing looks backwards. They would be creating a potent opinion in favor of the potentialities of government rather than distrust and doubt in it. As a result, plans and programs of the states and of the nation would be based more on hopes than on regrets.

That change can come quickly if we insist that the cream of our young membership obtain its apprenticeship in law by service in government. When it becomes fashionable for the young lawyer to give a few years of his life to city, state or nation before he starts working for himself, the lawyer will have resumed his traditional role of leadership in public affairs.

Increasing service by lawyers in government and in public enterprises will make them men of affairs not theoreticians in politics. It will make their contributions in after-years constructive and progressive. Their efforts will not be distinguished by obstructive tactics or by passive resistance. They will not bottom their creeds on abstractions from outworn symbols. As stated by Mr. Justice Frankfurter, "It is not without significance that the most profound contribution to political thought in America, namely, the Federalist, was not the work of doctrinaire thinkers but of men of affairs. The Federalist was a lawyer's brief by the framers of the Constitution in support of their handiwork."

I speak of these matters in Texas without hesitation or fear of misunderstanding. For your bar over the years has rendered unique service to state and nation. Your strong tradition of public service has set high standards for leadership of the bar everywhere.

Active, vigorous participation in the processes of government and in public affairs is one significant contribution which the bar can make as democracy faces its world crisis. There is another—the vigilant patrol of the domestic scene lest fear create an intolerance which is inconsistent with our Bill of Rights.

Creation of civil liberties committees by bar associations is a significant and commendable development in recent years. To protect those rights is to protect the very foundations of democracy, though it may be to tolerate the expression of ideas which we despise. But however repellent those ideas may be, their expression rather than their censor distinguishes our system. Whether the mind and spirit of man will be kept free is the basic issue at stake overseas. Let us be alert to see that that issue is not resolved here in favor of intolerance. "Familiarize yourself," said Lincoln, "with the chains of bondage and you prepare your own limbs to receive them. Accustomed to trample on the rights of others, you have lost the genius of your own independence."

The result of tolerance under a vitalized democracy will be unity and strength, not discord and dissension. The channels of communication are open to all. Use of the privileges of free speech to spread a faith in the ideals and performance of democracy will make feeble indeed the expression for ulterior purposes of dissident views.

Mobilization of the resources of the bar to demonstrate the efficacy and efficiency of the democratic process is the order of the day. It will be a complete answer to those who say that our system of government is decadent. It will reply by decisive action to those few who are lured by the superficial efficiency of foreign systems designed for the destruction, not the freedom, of people. It will demonstrate to the world that human decency and spiritual values can be preserved while the physical wants of man are satisfied.

County seats throughout this land are the cradles of advocacy. There the art of advocacy has survived the great inroads which business has made in our profession. There the lawyer is close to the people. He knows their needs and desires. He understands their longings and ambitions. He appreciates their high idealism. He knows the sources of their great strength. Knowing these things and being strong in the traditions of our free institutions, he can assume a commanding position of leadership in the grave days which lie ahead.

The daily use of his great talents of advocacy in

propagation of the democratic faith, in protection of minorities, in creation of tolerance, in making articulate the desires of the people will help create vast reserves of national strength which no amount of foreign propaganda can destroy.

No greater cause ever came to any advocate than the cause at stake in the world today.

Our constitutional rights of free speech and of freedom of assembly make this opportunity for advocacy available to all. Advocacy is peculiarly available to the lawyer because of his special skills.

The lawyer among men is most likely, as I have said, to be steeped in the traditions of our democratic system. His mind is trained to sift the false argument and the fallacious appeal. In every community today it is the lawyer who is preeminently qualified to assume immediate leadership in the democratic cause. Leadership to arouse the complacent and to steady the hysterical. Leadership in thinking, leadership in action. Leadership to expound the true democratic faith and to analyze and reject the false and subtle appeals of the foreign propagandist. Leadership to protect the Bill of Rights by practicing it and not by scrapping it. Leadership to shun violence. Leadership which shows a free people the true way of strength through unity of purpose.

Lawyers, like scientists, have been dead certain many times of the truth of things which were later proved false. But as we unite to consecrate ourselves to the democratic faith and to demonstrate its practicality, we need not have unanimity as to the solution of all current problems. It is sufficient that we underwrite the inalienable rights of man and our constitutional form of government. It is sufficient that we set the example in sacrifice and self-discipline which alone make freedom possible. It is sufficient that we agree on end and purpose.

Where every citizen has a stake in his country sufficient to justify the sacrifices which the future may require great unity and strength ensue.

The people today probably understand more clearly than ever before the basic issues at stake in the world arena. There has been a tremendous increase of interest by the public in government and in the affairs of the world. Enlightened public opinion has been one of the direct consequences of our great facilities of communication.

But in all walks of life, however humble, directive influences are needed. The latent energies of this great nation need guidance in the common cause. To the common idealism must be added the common endeavor. That requires local leadership in all departments of government. The bar, rededicated to the public service, meets the requirements for that leadership.

The country lawyer with his intimate relationship to his community and with his known fidelity can translate into daily action the commonplaces of our democratic creed.

Ideas are weapons in the present world struggle for survival of the democratic faith. Under the command of the lawyers of this country they are potent weapons indeed. Mobilization of the acumen, intelligence, imagination, and creative ability which have brought high distinction to our legal system for propagation of the democratic faith will create great reserves of strength which no amount of foreign propaganda can immobilize.

The great human resources of the bar are needed by state and nation in the public service. The resourcefulness of the legal profession can serve a high purpose in finding practical ways and means for consummating the hopes and desires of a free people. The energies of the profession, utilized to create confidence in the processes of democratic government, can provide one of our main lines of defense. The bar with its unequalled technical competence and deep patriotism, the country lawyers with their advocacy can provide guidance for the multitudes.

The bar will answer these demands with zeal and courage. Their devotion to American ideals will give inspiration to the nation. Their guidance and service in the democratic cause will supply national cohesion and strength. In this present world crisis their statesmanship will be a foremost national asset.

By its action the bar will once more earn the position of leadership which it has enjoyed in other critical periods of our history. And by that action it will have preserved on this continent the inalienable rights of man, the democratic faith. These efforts will not only enrich our own lives. They will replace with hope the despair which now fills the hearts of human slaves throughout the world.

[Justice Douglas—Texas Bar Journal, July, 1940]

"DROP by an office on the ground floor of the Supreme Court Building in Washington, D. C., and you might get a glimpse of a tall, angular, sharp-chinned man with frosty blue eyes. He might be studying a pending case and, again, he might be reading a favorite biography. This man is William Orville Douglas, associate justice of the Supreme Court. Justice Douglas has not spent all his professional life in an office with a black marble mantel and lined with Indiana white oak. The man who was to become the youngest member of the high tribunal since 1811, was born October 16, 1889, in Maine, Minn. He attended school at Yakima, Wash., and Whitman College in Walla Walla, where he received a bachelor of arts degree. Money he saved while teaching was spent to pay his entrance fees in Columbia Law School.

Justice Douglas finished second in the class of 1925, at Columbia and promptly landed a job with a Wall Street firm. He continued to teach at Columbia on the side, for a time, but later gave up his teaching work to enter active practice. He collaborated with the United States Department of Commerce in bankruptcy studies from 1929 to 1932. He served with the National Commission on Law Observance and Enforcement from 1930 to 1932.

Justice Douglas served on the Securities and Exchange Commission from 1934 until his appointment to the Supreme Court in 1939. He was elected chairman in September, 1937.

Although the Justice has spent much of his life in the East, he still retains the frankness of a Westerner and the fondness of short cuts. He is a believer in the realities of life and in the profession of law. He still likes to play poker and golf, and spends much of his leisure time reading biographies."

PHILADELPHIA'S HISTORIC GERMANTOWN

By Joseph Jackson
Author of Literary Landmarks, etc.

READERS of Frank R. Stockton's whimsical story, "The Squirrel Inn," if there are any today, need not be told that Germantown—now a part of Philadelphia—is a community whose residents take a pardonable, though sometimes lofty, pride in its history and especially in the character of its mansions and their hereditary occupants. It has been said that when a resident of Germantown registers at a hotel, he invariably gives that place, rather than Philadelphia, as his home address. Perhaps the only comparable instance is that of Brookline, which has maintained its municipal independence from Boston. While Germantown, together with twenty-seven other former municipalities, was legislated into the present City of Philadelphia nearly ninety years ago, its identity has, nevertheless, been preserved by its residents.

It is a most pleasing and gracious identity—in Germantown, one finds three centuries mingling in complete harmony, and represented by some of the most attractive dwellings anywhere in the Eastern United States. To all but the older residents—those to the manner born—there is only one Germantown. In fact, however, before it was merged with the City of Philadelphia, there were two Germantowns, the borough and the township.

The deep sense of dignity which "Germantowners" feel in their home is based in part upon the fact that it is almost as old as Philadelphia. The city was founded late in the year 1682, and Germantown in the summer of the following year. The original settlers were a few families from the Lower Rhine (principally from Crefeld and Frankfort) under the leadership of Francis Daniel Pastorius, agent of the Frankfort Company, which had purchased many thousands of acres from the proprietor of the new Province of Pennsylvania, William Penn.

Pastorius was a remarkable man: the son of a judge, he studied law in three Prussian universities, received his Doctor's degree at Nuremberg, and lectured on law at Frankfort; and traveled through France, England, Ireland and Italy. Although not originally a Quaker, he united himself with the Society of Friends soon after arriving in Philadelphia. He and his little band of settlers were people of peace, and gave to Germantown a character of tranquility which remains its dominant feature. An atmosphere of quiet refinement and peaceful heritage is exhaled by the streets and ancient houses even today. Nevertheless, Germantown remains distinct from the Quaker City, although its earliest settlers were members of the Mennonite Church and some of them became Quakers; the oldest religious congregation is the Meeting of the Society of Friends.

Native Germantowners have, by their loyalty to the community, extending for about a mile along the Germantown Road, preserved its ancient houses, its tree-lined streets, and its broad lawns. Enough of these remain, after three centuries of improvement and the transformation of a country town into an urban area, to present to the visitor even today the city's most ornamental residential section. Germantown has its own suburbs, which the loyal resident never fails to claim. Among these are Mt. Airy, Chestnut Hill, and the Wissahickon Valley, all of which have their historical and picturesque value.

Nearly every section of Germantown has its associations with the Revolutionary War and many of the buildings which figured in that conflict still stand, after more than 160 years. The mansion house of Judge Benjamin Chew was used as a fort by a company of British troops and was the scene of a bloody engagement. This property—Cliveden, or the Chew House, as it is generally called—remains today in the possession of the Chew family. At the lower end of Germantown is another splendid example of early eighteenth century architecture, regarded by some critics as the finest of its type in the Philadelphia area. This is Stenton, the home of James Logan, Chief Justice of Pennsylvania, President of the Provincial Council, and friend and secretary of William Penn. After more than two centuries, it is in excellent repair and has all its original charm; it has been preserved for posterity by the Pennsylvania Society of Colonial Dames.

CHEW'S HOUSE
Stood at pivotal point of battle of Germantown

Chief Justice Logan was for many years a leader of the Province, the earliest classical scholar of Pennsylvania, and its first noted bibliophile. His chief work, "Cato Major," was the first competent translation of a classic made in the Colonies. Curiously enough, it is frequently attributed to Franklin who merely wrote an introduction to it. The library of Chief Justice Logan, especially rich in Latin and Greek works, is now preserved in the Philadelphia Library. During the Battle of Germantown, Stenton was temporarily the headquarters of the British commander, General Howe. It is also associated with Washington, who was a visitor there on at least one occasion.

Washington's name is connected with the history of Germantown in other ways. During the yellow fever epidemic in Philadelphia in 1793, he leased the Morris House, which thus for a short time became the Nation's Executive Mansion. On the grounds of the Germantown Academy stands a tree reputed to have been planted by Washington while he was President. His adopted son, George Washington Parke Custis, was entered as a pupil in the Academy in 1794. After the Battle of Germantown, the British used the old school building as a hospital; this original structure,

now nearly 200 years old, is still in daily use by the school.

The first Bible in German was printed and published in Germantown by Christopher Sower, a famous early printer. None of the buildings connected with him now remain, but the ancient town still holds many old buildings of both historical and architectural interest. In one of them, now somewhat altered in appearance, Thomas Jefferson, then Secretary of State, had his office during the yellow fever epidemic.

Wyck House, the oldest house in Germantown, 1690

Wyck, probably the oldest house in Germantown—dating from the year 1690—is also one of the most picturesque. It is a long, two-and-a-half story structure with trellis and climbing vines covering its white walls. Its unusual architecture is accounted for by the fact that it originally comprised two houses, separated by a driveway which was later built over and became the entrance hall in the present structure. It has been in the possession of the Haines family since its original erection and has never been sold, passing by inheritance from one generation to another.

During the eighteenth century, its grounds were frequently used by visiting Indians as a temporary camp while they sold their baskets and other goods. After the Battle of Germantown, it was an emergency hospital for the Colonial troops. The history of almost any one of the oldest houses of Germantown will be found connected with the battle which took place here during the Revolution. To name only two, in Grumblethorpe, the John Wistar House, the British General Agnew died of his wounds, and in front of the Billmeyer House, Washington had a brief conference with his staff during the battle.

Most of these old houses were constructed of a dark native stone harmonizing with the simple but tasteful architecture usually described as Colonial and give an obvious sense of solidity. Some of the oldest, such as Stenton, however, were built of brick and, until a few years ago, there was at the upper end of the town of Mt. Airy a log building reminiscent of the earliest type known in the locality.

The Quaker poet, Whittier, was deeply interested in the story of Germantown and its settlement, which formed the basis of his long poems, "The Pennsylvania Pilgrim," the epic of Pastorius, describing the Quaker pilgrims and contrasting them with the Pilgrim Fathers of New England. Of course, at the time Whittier wrote, Germantown had the air of a country town, which it no longer possesses.

Gilbert Stuart, the great American portrait painter, lived in Germantown for a short time and there is still pointed out the site or the remains of his supposed

John Bartram's Mansion, 54th and Eastwick

studio, where it is said (without much evidence) that he painted his famous Athenaeum portrait of George Washington.

The first portrait painted in this part of the world was executed in Germantown by Dr. Christopher Witt, who was an amateur painter as well as the earliest botanist in Pennsylvania, a mystic, an astrologer, and many other things. The subject was Johann Kelpius, a friend of Dr. Witt and head of the peculiar group known as Pietists who settled in Germantown. Of Dr. Witt's botanic garden, which was famous throughout the Colonies, there appear to be no remains. This was begun at least twenty years earlier than that of John Bartram, America's first native botanist.

Bartram's Garden and his stone mansion, however, have been preserved. This property on the bank of the Schuylkill River (in West Philadelphia) is now a public park; some years ago the city took it over and restored the house to its original condition. Legend asserts, not very convincingly, that Bartram built this house with his own hands. Its architecture is unlike any of our Colonial mansions: the carved window facings may be traced to similar ones in Gloucestershire, England, the stone porch and entrance were original with Bartram, and the general plan seems to be founded upon a seventeenth century form known as the H-type house (now obsolete in Philadelphia and probably elsewhere). The garden itself contains many interesting and rare types of trees and plants collected by the owner or sent to him by admirers (including royalty)—so many indeed as to make Bartram's Garden a mecca for botanists and for scientists from all parts of the world.

House occupied by Joseph Bonaparte, built in 1812

ROSS ESSAY CONTEST

Subject: To What Extent May Courts Under the Rule-Making Power Prescribe Rules of Evidence?

III
ESSAY SUBMITTED BY JAY J. STEIN*

"EVIDENCE is the basis of Justice," maintained Jeremy Bentham.[1] To the monumental work giving rise to these words,[2] reform in the field of evidence owes great impetus.[3] From Bentham's time until recently, however, such reform has been directed mostly to the nature of the rules of evidence rather than to the character of the body prescribing them. Any extended inquiry into the question whether such rules might be formulated by the courts under the rule-making power began only as and when such power in general became the subject of observation. Exhaustive though the studies on the rule-making power have been,[4] and almost unanimous though their conclusion upholding it,[5] nevertheless, any analysis of the problem as to the extent to which the courts may prescribe rules of evidence thereunder must necessarily reconsider certain phases of the power itself. In view thereof, the answer to such question shall be sought by a critical examination of (I) the historical approach to the rule-making power; (II) the various enabling statutes conferring the power; (III) the rules of evidence, if any, which have been prescribed under the power; (IV) the construction placed upon such enabling acts, rules of evidence, and the term "procedure"; and (V) the reasons advanced for the exercise of the power. From such considerations shall the conclusions of this paper flow.

I.

In the determination of whether a power belongs to a particular department, executive, legislative, or judicial, several authorities have adocated employing a historical criterion. They pose the query whether at the time our constitutions were adopted, the power in question was exercised by the Crown, by Parliament, or by the courts. From their answer that when the American constitutions were adopted, the power to make general rules governing procedure was and for centuries had been in the King's courts at Westminster, the conclusion is drawn that as an inheritance this country has received the English system of regulating procedure by rules of court and that the making of such general rules was and is a judicial function.[6] In substantiation thereof, the authorities point to the rules in Tidd's *Practice*,[7] which was the standard book on English procedure when the American constitutions were formulated. An examination of the index, however, to the more than five hundred general rules, orders and notices in this work fails to reveal any directly relating to evidence.[8]

While the presence among such rules, of rules of evidence, would, according to the historical critique, have demonstrated the inherent power of the courts to prescribe the same, nevertheless, the absence thereof does not necessarily compel a negative conclusion. Further study of the historical criterion would be indicated were it not that the propriety of the application thereof to our present inquiry is questionable because of objections raised to the standard itself. Such criticism relies upon the facts, first, that the American doctrine of the separation of governmental powers, underlying every discussion of the rule-making power, was almost unknown in England during the period in which the historical argument had its roots, and second, that, however extensively the English courts may have exercised the rule-making power prior to the American Revolution, Parliament did also pass statutes relating to practice and procedure.[9] To demonstrate, therefore, the character of the body that prescribed rules of evidence in England prior to the American Revolution is not necessarily to establish the extent of American courts' power in this particular.

A further reason suggests itself why our inquiry

*Editor's Note: As suggested in the June issue of the JOURNAL, we publish herewith one of the essays submitted in the Ross Essay Competition—an essay which was not awarded the prize but is deemed to be of a high standard of excellence and effectiveness. Mr. Stein, author of the essay published in this issue, is a member of the Los Angeles Bar.

1. Quoted in Wigmore, *A Critique of the Federal Court Rules Draft*, 22 A. B. A. J. 811, 813 (1936).

2. BENTHAM, RATIONALE OF JUDICIAL EVIDENCE (1827).

3. For an estimate of Benthan's influence on reform in the law of evidence, see DILLON, THE LAWS AND JURISPRUDENCE OF ENGLAND AND AMERICA, (1894) Lecture xii, 315, 339: "In some respects his 'Judicial Evidence' . . . is the most important of all his censorial writings on English law. In this work he exposed the absurdity and perniciousness of many of the established technical rules of evidence." See also DICEY, LAW AND OPINION IN ENGLAND, (1905) Lect. vi, 125, 205.

4. For bibliographies on the subject, see 16 A. B. A. J. 199 (1930), and FIFTH ANNUAL REPORT AND STUDIES OF THE JUDICIAL COUNCIL OF THE STATE OF NEW YORK, (1939) Appendix C, 311.

5. "Indeed the power to govern procedure by general rules has been universally regarded as part of the judicial function and hence as an inherent power of courts of justice." Pound, *Regulation of Judicial Procedure by Rules of Court*, (1915) 10 ILL. L. REV. 163, 172.

6. Gertner, *The Inherent Power of Courts to Make Rules*, (1936) 10 CINN. L. REV. 32, 33; Pound, *Regulating Procedural Details by Rules of Court*, (1927—Part II) 13 A. B. A. J. 12, 14; Paul, *The Rule-Making Power of the Courts*, (1926) 1 WASH. L. REV. 163, 164; Morgan, *Judicial Regulation of Court Procedure*, (1918) 2 MINN. L. REV. 81, 92.

7. TIDD, THE PRACTICE OF THE COURTS OF KING'S BENCH AND COMMON PLEAS (1794).

8. See Chronological Table of General Rules, Orders and Notices, TIDD, *op. cit. supra*, note 7, (8th ed. 1824) Vol. 1, xxxvii.

9. Hibschman, *The Power to Regulate Court Procedure—Is It a Legislative or a Judicial Function?* (1937) 71 U. S. L. REV. 618, 622; and Ohlinger, *Questions Raised by the Report for the District Courts of the United States*, (1937) 11 CINN. L. REV. 445, 449, n. 18. A similar observation is found in Tyler, *The Origin of the Rule-Making Power and Its Exercise by Legislatures*, (1936) 22 A. B. A. J. 772, 773: "And so there is still the *caveat* that in any attempt to define a governmental function by the character of the body exercising it in English history it must be remembered that in early England the government was one of fused and not divided powers."

should not be confined to the historical approach. While many courts have adhered to the theory of their own inherent power to prescribe rules governing procedure,[10] others, instead, have determined the propriety of such rules by reference to the rule-making authority conferred by the legislative enabling acts.[11] Thus, the dictum of Chief Justice Marshall in an early case,[12] to the effect that the power of the United States courts to make rules was a proper grant of authority to the courts by Congress, apparently became the accepted law, and, since then, validity of the federal court rules tested by their conformity with the enabling statutes.[13] Similarly, many state courts have looked to the scope of enabling legislation in their determination of the extent of their rule-making powers.[14] Moreover, many legal authorities, while prescribing to the inherent power doctrine, also refer to the enabling statutes.[15] Necessarily, therefore, enabling acts must be studied to ascertain whether the scope thereof permits of the prescription of rules of evidence. Such examination shall be limited to those acts conferring the rule-making power upon the courts[16] with respect to practice and procedure in civil actions at law, and shall not consider legislation granting such power either to courts in other proceedings (except for comparative purposes in those instances hereinafter noted), or to administrative tribunals.[17]

II.

In the realm of federal legislation, the pertinent statute is that, effective as of June 19, 1934, (hereinafter referred to as the "Federal Act"), under section 1 of which the Supreme Court of the United States is given "the power to prescribe, by general rules, for the district courts of the United States and for the courts of the District of Columbia, the forms of process, writs, pleadings, and motions, and the practice and procedure in civil actions at law."[18]

Substantially all of the states have some provisions, constitutional or statutory, relative to the grant of rule-making power to the courts.[19] The extent to which such power, however, is authorized thereunder varies considerably. Various attempts have been made to classify the states according to the type or extent of rule-making power permitted.[20] Thus one analysis classifies the states according to the "degree" of power the courts may exercise, distinguishing them as to whether they may make rules concerning only their own procedure ("local rules"), or rules which affect other courts ("general rules"), and whether the power extends to make rules which supplant and override statutes ("absolute rules"), or only to rules which do not conflict with statutes ("consistent with law").[21] Another classification divides the states into those where the "complete" rule-making power exists, either by virtue of constitutional or statutory enactments, not subject to the requirement of consistency with state statutes, and those where the power given is required to be consistent with law or statute, either by express limitation in the enabling act or by court interpretation of such act.[22]

While these classifications demonstrate the major variances between the rule-making power conferred in the acts of the several states, their usefulness in our present inquiry is limited for several reasons. First, the authorities themselves often differ in their interpretation as to the extent of the power granted in a particular instance, and, consequently, as to the proper classification of a particular state. Secondly, due undoubtedly to the impetus given the whole movement by the adoption of the federal act, a number of states have recently adopted laws, conferring greater rule-making authority upon the courts, indicating clearly that the trend of the states is decidedly toward an enlargement of the power.[23] Thirdly, any limitations on the power pro-

10. See, for example, State v. Roy, 40 N. M. 397, 417, 60 P. (2d) 646, 659 (1936); *In re* Constitutionality of Sec. 251.18, 204 Wis. 501, 236 N. W. 717 (1931); Kolkman v. People, 89 Colo. 8, 32, 300 Pac. 575, 584 (1931); and State *ex rel.* Foster-Wyman Co. v. Superior Court, 148 Wash. 1, 267 Pac. 770 (1928).

11. See Gertner, *The Inherent Power of Courts to Make Rules*, (1936) 10 CINN. L. REV. 32, 46, 51. Gertner criticises the courts for upholding the authority of the rules by reference to their consistency with enabling statutes on the ground that such authority "has contained the seeds of its own destruction in those cases where a conflict has actually been found to exist between the rules and the statutes."

12. Wayman v. Southard, 10 Wheat. 1 (U. S. 1825).

13. See, for example, Walker v. Monad Engineering Co., 196 Fed. 206, 208 (C. C. A. 8th, 1912); and Mahr v. Union Pac. R. Co., 140 Fed. 921, 925 (C. C. E. D. Wash. 1906).

14. See for example, Weil v. Federal Life Ins. Co., 264 Ill. 425, 429, 106 N. E. 246, 247 (1914); and Hayden v. Superior Ct., 22 Cal. App. 23, 133 Pac. 26 (1913).

15. See *post*, section IV.

16. For a definition of "court" as distinguished from "administrative body," see McDermott, *To What Extent Should the Decisions of Administrative Bodies Be Reviewable by the Courts*, (1939) 25 A. B. A. J. 453, 454; for etymology of the term "court," see Millar, *The Lineage of Some Procedural Words*, (1939) 25 A. B. A. J. 1023, 1024.

17. That the rule-making power has been adopted uniformly in the setting up of administrative boards and commissions, state and federal, has been often pointed out. See Sunderland, *Expert Control of Legal Procedure Through Rules of Court*, (1927) 13 (Supp.) A. B. A. J. 2, 3; and Pound, *Regulating Procedural Details by Rules of Court*, (1927) 13 (Supp.) A. B. A. J. 12. For discussions of the part played by rules of evidence before such fact-finding boards, see Stephan, *The Extent to Which Fact-Finding Boards Should Be Found by Rules of Evidence* (1938), 24 A. B. A. J. 630 and articles cited therein, 631, n. 27.

18. Act of June 19, 1934, 651, Secs. 1, 2 (48 STAT. 1064), 28 U. S. C. Secs. 723b, 723c. Section 2, thereof, authorizes the court to make rules to unite the federal law and equity procedure. The principle credit for the long campaign which made the adoption of the act possible, and for the form of the act itself, has been given to the American Bar Association. See: Radin, *The Achievements of the American Bar Association: A Sixty Year Record*, 25 A. B. A. J. 1007, 1010 (1939); Clark, *Power of the Supreme Court to Make Rules of Appellate Procedure*, 49 HARV. L. REV. 1303, 1304 (1936); Sunderland, *The Grant of Rule-Making Power to the Supreme Court of the United States*, 32 MICH. L. REV. 1116, 1117 (1934).

19. For such states and provisions, see FIFTH ANNUAL REPORT AND STUDIES OF THE JUDICIAL COUNCIL OF THE STATE OF NEW YORK, Appendix A, 290-307 (1939); and Harris, *The Extent and Use of Rule-Making Authority*, 22 J. Am. Jud. Soc. 27-37 (1938).

20. Another basis of classification used is the division of states by groups depending on whether the power is exercised by (1) the legislature, (2) the courts, (3) the legislature and the courts, or (4) the legislature and the Judicial Council: See FIFTH ANNUAL REPORT, *op. cit. supra*, note 19; Hibschman, *The Power to Regulate Court Procedure—Is It a Legislative or Judicial Function?* 71 U. S. L. REV. 618, 630 (1937).

21. Harris, *op. cit supra*, note 19.

22. Paul, *The Rule-Making Power of the Courts*, 1 WASH. L. REV. 163, 172, 180 (1926); and see Wheaton, *Procedural Improvements and the Rule-Making Power of Our Courts*, 22 A. B. A. J. 642 (1936).

23. For substantiation of such trend, see *More States Adhere to Rule-Making Principle*, 23 J. Am. Jud. Soc. 65, (1939). Since 1934, new or amended enabling acts conferring the rule-making power, many modeled after the federal act, have been passed by the legislatures in the following states: Alabama, Arizona, Colorado, Delaware, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Maryland, Michigan, Nebraska, New Jersey, North Carolina, Ohio, Pennsylvania, South Dakota, Tennessee, Virginia, and Wisconsin.

vided by the enabling acts, such as the legislative right of amendment or repeal of rules, are of concern only as they might preclude or restrict the courts in the prescription of rules of evidence. For the purpose of this inquiry, therefore, a classification of the statutes based upon a different approach would appear necessary.

The material wording of the enabling acts of the several states, apart from the provisions relative to legislative control and consistency with state statutes, varies surprisingly little. Typical of most is the following provision of the Arizona act, of 1939:

"The supreme court, by rules promulgated from time to time, shall regulate pleading, practice and procedure in judicial proceedings in all courts of the state . . ."[24] This is similar to the corresponding provision, previously quoted, of the federal act. In the case of two states, we find slight variations in language from the Arizona act, of questionable affect on the extent of the power: The Texas act, also of 1939, confers upon the court the "*full* rule-making power,"[25] while the Washington statute authorizes the supreme court to prescribe by rule "the *entire* pleading, practice and procedure . . ."[26]

In only a few of the many enabling provisions have the courts been authorized to prescribe rules of evidence as such. The 1939 Maryland statute states specifically that such general rules may regulate "the form and method of taking and the admissibility of evidence in all civil actions."[27] The Nebraska act, also of 1939, authorizes the supreme court to promulgate "rules for admission and exclusion of evidence" in civil actions at law.[28] Mention should also be made of the Connecticut statute, which, though confining the exercise of the rule-making power to only certain types of civil actions, permits rules for the hearing of small claims to include those modifying any or all existing rules of pleading, practice and evidence.[29]

Another general exception, noteworthy for our purpose, is found in those states, namely, New Mexico, South Dakota, and Wisconsin, where the legislative acts, conferring the rule-making authority on the supreme courts, also expressly provide that all statutes relating to pleading, practice and procedure shall have force and effect only as rules of court and shall remain in effect unless and until modified or suspended by rules promulgated by the supreme courts.[30] The effect of such provisions will be discussed later in this article.

III.

Any attempt to point out rules of evidence prescribed by the courts pursuant to the rule-making power necessitates first a determination of what is meant by such rules. "Rules of evidence" have been defined as "those limitations on the presentation of facts to the modern jury which result from standards of admissibility, relevancy, materiality, and competency."[31] A distinction between a rule of evidence and mode of proof has been made on the basis that the latter relates to the *manner* of taking evidence, and it has been argued that the Mode of Proof Act[32] did not confer upon the Supreme Court the power to make rules of evidence.[33] On the other hand, authorities casting doubt on such distinction are not lacking. Thus the opinion has been advanced that the more likely reason for the failure to prescribe rules of evidence under the Mode of Proof Act lies not in lack of power but rather in the fact that it is only in common-law cases where the jury is used, that any such body of rules is needed.[34] In addition, the Notes to the Rules of Civil Procedure for the District Courts of the United States[35] declare that the first sentence of Rule 43, entitled Evidence, is a restatement, of the substance, *inter alia*, of the Mode of Proof Act; and the section in the United States Code containing such act is found in the chapter entitled "Evidence."[36]

The uncertainty surrounding the differentiation of "rule of evidence" and "mode of proof" has been pointed out as an example of the difficulty of accurately classifying all rules relating to evidence. There have been some rules prescribed by the courts which fall clearly within or without the definition hereinabove given. On the other hand, there are a number of rules which, though relating to the manner of taking evidence or other phases of the subject, are open to doubt as coming within such criterion. And yet, statutory provisions similar in all respects to such rules have been found in chapters entitled "Evidence." For example, a rule relative to the taking of a deposition of a witness may be questioned as falling within the definition given, and yet, in a leading case on the rule-making power, the court declared that it involved the "receiving of evidence before the courts,"[37] and, further, the subject "depositions" is found under the title "evidence" in the United States Code[38] and in various state codes.[39] In view of this difficulty in classification, too close adherence to the definition of rules of evidence quoted above would seem undesirable for the purpose of this paper, and, therefore, some rules relating to evidence will be noted which may or may not fall strictly within such definition.

Of the Rules of Civil Procedure finally adopted by the Supreme Court[40] pursuant to the federal act, only one, Rule 43, is designated by the title "Evidence." The following headings of the five subdivisions of this rule indicate, sufficiently for the present purpose the subject thereof: (a) "form and admissibility," (b) "scope of

24. Ariz. Sess. Laws., 1939, c. 8, p. 11.
25. Vernon's ANN. REV. CIVIL STATS. OF TEX. (1939 Supp.) tit. 37, art. 1731a.
26. Remington's WASH. REV. STATS. ANN. (1932) vol. 2, tit. 1, Sec. 13-1.
27. Md. Laws, 1939, c. 719, pp. 1520, 1521.
28. Neb. Sess. Laws 1939, c. 30, p. 164.
29. 2 CONN. GEN. STAT. (Rev. 1930), Sec. 5360, p. 1679.
30. N. M. Laws, 1933, c. 84, Secs. 1, 2; N. M. SUPP., 1938, Secs. 34-501, 34-502; 2 S. D. CODE, 1939, c. 32.09, Sec. 32.0902; WIS. STATS., 1929, c. 251.18.
31. Stephan, *The Extent to Which Fact-Finding Boards Should Be Bound by Rules of Evidence*, 24 A. B. A. J. 630, 631 (1938), citing WIGMORE, EVIDENCE (2d ed. 1923), Sec. 1.
32. REV. STAT. SEC. 862, 28 U. S. C. (1928) Sec. 637, derived from Act Aug. 23, 1842, c. 188, Sec. 6, 5 Stat. 518 (providing that: "The mode of proof in causes of equity and of admiralty and maritime jurisdiction shall be according to rules now or hereafter prescribed by the Supreme Court. . . .")
33. See Callahan and Ferguson, *Evidence and the New Federal Rules of Civil Procedure* (1936), 45 YALE L. J. 622, 624, n. 13, 625. It has also been pointed out that the early congressional legislators carefully distinguished between such terms as "practice and procedure," "modes of proof," and "rules of decisions." Ohlinger, *Questions Raised by the Report of the Advisory Committee on Rules of Civil Procedure for the District Courts of the United States*, (1937) 11 CINN. L. REV. 445, 456.
34. Callahan and Ferguson, *op. cit. supra*, note 33.
35. (March, 1938), p. 37. These notes were issued by the Advisory Committee on Rules for Civil Procedure appointed by the Supreme Court.
36. See citation, *supra*, note 32.
37. State *ex rel.* Foster-Wyman Lumber Co. v. Superior Ct., 148 Wash. 1, 14, 267 Pac. 770, 774 (1928).
38. 28 U. S. C. (1928) c. 17, Secs. 639-652.
39. See, for example, ARIZ. REV. CODE (1928) c. 95, Secs. 4421-4444; and CAL. CODE CIV. PROC. (1939) Part IV, Secs. 2019-2038.
40. Effective Sept. 16, 1938. For explanatory comments thereon, see Notes to the Rules, *op. cit. supra*, note 35.

examination and cross-examination," (c) "record of excluded evidence," (d) "affirmation in lieu of oath," and (e) "evidence on motions." Also to be observed are Rule 44, relating to authentication of copies of official records, and proof of official records, or lack thereof, and Rules 26 to 37, covering the subjects of "depositions and discovery," and more particularly, Rules 35 and 36, relating to "physical and mental examination of persons" and "admission of facts and of genuineness of documents," respectively.

An examination of most of the rules now in effect promulgated by the highest courts of the several states for the conduct of civil actions in lower courts discloses relatively few relating to evidence. The hope of many proponents of the new Federal Rules has been that the states would adopt rules similar thereto, thereby furthering the cause of uniformity. That such wish may be fulfilled is likely in view of the recent trend: at least one state, Arizona, has adopted rules, which "are, in substance, the new Federal Rules of Civil Procedure, modified in a few instances to suit . . . local conditions,"[41] and other states have indicated a similar intention.[42] Thus are to be found in the new Arizona rules provisions relating to evidence almost identical with those federal rules just noted. Undoubtedly the rules hereafter adopted by the other states will contain similar evidentiary provisions.

Reference has heretofore been made to the states of New Mexico, South Dakota, and Wisconsin, where the enabling acts expressly provide that all statutes relating to pleading, practice and procedure shall have force and effect only as rules of court until modified.[43] By reason of such statutes a considerable number of provisions on evidence originally enacted by the legislatures have become rules of court.

Thus in New Mexico we find as court rules provisions, all of which once constituted part of a code chapter entitled "Evidence," relating to the following subjects:[44] depositions; perpetuating testimony; oral examinations out of court and testimony at former trial; competency of witnesses; and a number of miscellaneous subjects, including corroboration of testimony in claims against an estate; proof of municipal ordinances; impeachment of witnesses; proof of conviction, and of bad character, of witnesses; proof of consideration on written instruments, and of records and unsealed instruments; books of account; abstracts of title; and signatures and handwriting.

In South Dakota, by a similar process, principles, once legislatively prescribed, and now rules of court under the general heading "Judicial Proof," relate to the following:[45] persons qualified and included as witnesses; methods of taking testimony; subpoenas; rights and privileges of witnesses; depositions, procuring evidence, discovery, admissions, inspections and physical examinations; proof of laws, regulations, and official sovereign documents; proof of judicial records and proceedings; proof of public records and reports; proof of private records; and proof of certification.

In Wisconsin, statutes which by reason of the enabling act became rules of court, included those covering the following subjects:[46] witnesses and oral testimony; depositions, oaths and affidavits; documentary and record evidence; presumptions; and judicial notice.

The value of these rules as precedents for the prescription of rules of evidence by the courts is somewhat weakened by several factors. In the case of the enabling acts of both South Dakota and Wisconsin, the legislatures are expressly given the right to enact, modify or repeal all such rules.[47] While the New Mexico statute does not contain a similar provision, apparently the legislature deems such right to be implied in view of its adoption upon and subsequent to the date of the enabling statute of amendments to the rules relating to privileged communications[48] and competency of husband and wife as witnesses.[49] Nevertheless, in New Mexico and in Wisconsin the courts have adopted new or amended the old rules of evidence subsequent to the dates of the respective enabling statutes. Thus in New Mexico, the court itself prescribed rules relative to admissibility of copies of official documents and to judicial notice.[50] In Wisconsin, the court adopted amendments to the following rules which were originally statutory provisions: discovery examinations before trial, and demand to admit documents and facts;[51] adverse examination at trial, and deposition as evidence;[52] account books and loose leaf systems;[53] and certification of non-filing, and official records as evidence.[54]

Other than those heretofore described, relatively few of the state high courts have adopted rules relating to evidence. The Supreme Court of Colorado once made a rule permitting comment on the evidence,[55] which subsequently, upon protest, was restricted by the legislature.[56] Florida's supreme court has adopted rules relating to proof of handwriting in documentary evidence, of duplicate originals, and of account books.[57] Illinois' high court has prescribed a rule respecting request of admission as to genuineness, and as to specific facts, and to preparation, in advance of trial, of copies of public records.[58] A Maine court rule regulates the use of office copies of deeds in evidence.[59] All of these rules were prescribed pursuant to enabling acts of the respective states.

In addition to the rules promulgated by the state supreme courts for lower courts, there are rules of evidence prescribed by the trial courts also. Practical difficulties have prevented an examination of many of

41. See preface to Ariz. Rules of Civil Procedure of Supreme Court (effect. Jan. 1, 1940).

42. Colorado, for example—see State Adaptation of Federal Rules, 25 A. B. A. J. 990, 1072 (1939); Nebraska, too, according to advice from clerk of the supreme court, now has committee engaged in preparation of similar rules. For further evidence of this trend, see recent *Report of the Advisory Committee to the Supreme Court*, (1940) quoted in 26 A. B. A. J. 178: ". . . Furthermore, as was hoped, many states are adopting the method of court-made rules and seem disposed to adopt rules like the federal rules with only such changes as local conditions require. . . ."

43. See *supra*, note 30.

44. N. M. STATS. ANN., 1929 Comp., c. 45, Secs. 45-101—45-617.

45. S. D. CODE, 1939, tit. 36, Secs. 36.01-36.11, respectively.

46. WIS. STATS. 1929, c. 325-328, respectively.

47. See statutes cited *supra*, note 30. For the effect of such provision upon the rule-making power, see *In re Constitutionality of Sec.* 251.18, 204 Wis. 501, 513, 236 N. W. 717, 722 (1931).

48. Laws, 1933, C. 33, Sec. 1; N. M. Supp., 1938, Sec. 45-512.

49. Laws, 1935, C. 35, Sec. 1, N. M. Supp., 1938, Sec. 45-505.

50. 40 N. M. ix, x, Secs. 45-701 and 45-702, respectively (effect. 1937).

51. 204 Wis. v, ix. (see also 212 Wis. v, xix) Secs. 326.12 and 327.22, respectively (effect. 1931).

52. 212 Wis. v, xix, Sec. 325.14 (effect. 1934).

53. 217 Wis., v, x, Sec. 327.24 (effect. 1936).

54. 221 Wis. v, vi, Secs. 327.09 and 327.18, respectively (effect. 1937).

55. Rules of the Supreme Court, 1929, Rule 14b.

56. Laws, 1931, p. 680, Sec. 1.

57. 122 Fla. 881, Rules 61-63, respectively (effect. 1936).

58. Smith-Hurd ILL. ANN. STATS. C. 110, Secs. 259.18 (Rule 18).

59. *Rules of the Supreme Judicial and Superior Courts of Maine*, 129 Me. 503, 513, Rule 26 (effect. 1931).

these, but, of those studied, there may be noted rules of the superior courts both of Georgia, relative to the foundation for secondary evidence, and introduction of a copy of a grant deed in evidence,[60] and of Rhode Island, respecting proof of the signature of a party to a written instrument and the use of pleadings as evidence before a jury.[61] These rules also were adopted pursuant to enabling statutes.

IV.

It should be apparent that the extent of the courts' right to prescribe rules of evidence under the rule-making power cannot be determined solely by reference to the relatively few such rules in effect. Various reasons have been advanced for the infrequent exercise of this power generally. The suggestion has been made, for example, that the reluctance of the courts has been due to their fear that at some future time they might have to admit that a particular rule was not within their province.[62] Unquestionably, uncertainty as to the extent of their authority has had a deterrent effect upon the courts. This is demonstrated by the example of the new Federal Rules; in his letter, submitting the preliminary draft of such rules, William D. Mitchell, chairman of the Advisory Committee, declared:[63]

"There is some difference of opinion in the committee as to the extent to which the statute authorizes the court to make rules dealing with evidence. We have touched the subject as lightly as possible. . . . Members of the bar have been considerably troubled as to what the rules of evidence would be. Our Rule 50[64] is intended only to close the gap and prevent confusion and doubt."[65]

As reflected in the attitude of the Advisory Committee, the question whether the Court under the federal act is authorized to prescribe rules of evidence has been and still is the subject of controversy. The conclusion of most commentators, as indicated by Clark, the reporter of the Advisory Committee, has been in the affirmative.[66] Opinions to the contrary, however, are not lacking,[67] and doubt has been expressed as to whether the rules of evidence as drafted did not "exceed the scope of the power conferred by the enabling act and either border upon, or enter the field of legislation."[68]

These different conclusions have been based upon several considerations. Prior federal enabling statutes are often referred to as precedents. The comparable English statutes,[69] incidentally, are valueless for such purpose since, apart from the points heretofore made relative to the historical approach, they expressly declare that the rules may not "affect the mode of giving evidence by the oral examination in trials with a jury, (or) in the rules of evidence, . . ."[70] Although prior statutes conferred the rule-making power in admiralty and equity,[71] it was not until the Act of August 23, 1842,[72] that the Supreme Court was given power to prescribe the "proceedings and pleadings in suits at Common Law" as well. Such power, however, was not exercised by the Court.[73] Of the various reasons advanced for this inaction,[74] perhaps the most logical is that pointing to the overconservatism of the bench and the bar in those days.[75]

Reference has heretofore been made to the Mode of Proof Act and the explanations of the Court's failure to prescribe rules of evidence thereunder.[76] Two other statutes are cited in aid of construction of the federal act. In declaring that the federal courts must follow the decisions of state courts on questions of evidence in law trials, the Supreme Court often has invoked the Rules of Decision Act,[77] generally regarded as dealing only with matters of substantive law, and not applied the Conformity Act,[78] referring to the "practice, pleadings and forms and modes of proceeding." The opinion has been advanced that Congress could not have intended that the Rules of Decision Act be repealed by implication by the federal act, and hence could not have intended that the rule-making power extend to the field of evi-

60. 9-GA. ANN. CODE (Supp.) tit. 24, Secs. 24-3360 and 24-3361, Rules 60 and 61, respectively.

61. 26 R. I. xiii, xvii, rules 18 and 19, respectively (effect. 1905).

62. Gertner, *The Inherent Power of Courts to Make Rules*, (1936), 10 CINN. L. REV. 32, 43.

63. Letter, dated May 1, 1936, found in Pamphlet of same date, containing Preliminary Draft. See, also, Mitchell, *Attitude of Advisory Committee*, (1936). 22 A. B. A. J. 780, 782.

64. Rule 50 of the Preliminary Draft of May, 1936, Rule 44 of the April and November, 1937, Reports of the Committee, and Rule 43 as adopted by the Supreme Court are, in general, the same in scope.

65. See Pike, *The New Federal Rules of Civil Procedure*, (1937). 12 CAL. ST. B. JOUR. 192, 223, 226, where it is stated: "The rules do not purport to cover the field of evidence. However, due to the merger in law and equity it was thought that some confusion would be saved by stating certain of the principles in this field," and Callahan and Ferguson, *Evidence and the New Federal Rules of Civil Procedure* (1937). 47 YALE L. J. 194. It is unfortunate that there was not followed the suggestion made at the time the Federal Act was proposed that "it should expressly include or exclude evidence in order to avoid the exhausting process of court interpretation that, because of this omission, the Rule of Decision Act and Conformity Act underwent." Sweeney, *Federal or State Rules of Evidence in Federal Courts*, (1932). 27 ILL. L. REV. 394, 398.

66. Clark, *Power of the Supreme Court to Make Rules of Appellate Procedure*, (1936), 49 HARV. L. REV. 1303, 1311; and also, Clark and Moore, *A New Federal Civil Procedure*, (1935), 44 YALE L. J. 387, 415, wherein the authors stated they planned to recommend provisions for a uniform system of rules of evidence.

67. Wickes, *The New Rule-Making Power of the United States Supreme Court*, (1934), 13 TEX. L. REV. 1, 23; and see Williams, *The Source of Authority for Rules of Court Affecting Procedure*, (1937), 22 WASH. U. L. QUART. 456, 462, n. 10.

68. Ohlinger, *Questions Raised by the Report of the Advisory Committee on Rules of Civil Procedure for the District Court of the United States*, (1937), 11 CINN. L. REV. 445, 456, 458.

69. Judicature Acts of 1873 (36 & 37 Vict. c. 66) and of 1875 (38 & 39 Vict. c. 77).

70. Judicature Act of 1875 (38 & 39 VICT. c. 77) sec. 20. An exception to this was made by sec. 3 of the Judicature Act of 1895 (57 & 58 VICT. c. 16), which allowed the means and mode of proving facts to be regulated by rules of court in (1) any proceeding for the distribution of property, and (2) any interlocutory application in a pending cause. See ROSENBAUM, THE RULE-MAKING AUTHORITY IN THE ENGLISH SUPREME COURT, (1917 ed.) 32, n. 41; and 13 HALSBURY, THE LAWS OF ENGLAND, 419 n.(a).

71. The Judiciary Act of 1789, Act of Sept. 24, 1789, c. 20, 1 STAT. 73; and the Process Act of 1792, Act of Sept. 29, 1789, c. 21, 1 STAT. 93.

72. C. 188, 5 STAT. 516, confirming 1 How. (U. S.) xli-lxx.

73. Sweeney, *op. cit. supra*, note 65.

74. For these reasons, see Tolman, *The Origin of the Conformity Idea-*, (1937), 23 A. B. A. J. 971, 972; Sweeney, *Federal or State Rules of Evidence in Federal Courts*, (1932), 27 ILL. L. REV. 394, 398, n. 36; and Pound, *The Rule-Making Power of the Courts*, (1926), 12 A. B. A. J. 599, 600.

75. See Pound, *op. cit. supra, note* 74.

76. See *supra*, notes 32-34 and text.

77. U. S. REV. STAT., Secs. 721 (1878), 28 U. S. C. Sec. 725 (1928), derived from Act of Sept. 24, 1789, c. 20, Sec. 34, 1 STAT. 92.

78. U. S. REV. STAT. Sec. 914 (1878), 28 U. S. C. Sec. 724, (1928), derived from Act of June 1, 1872, c. 255, Sec. 5, 17 STAT. 197.

dence.[79] A number of answers thereto have been given. The fact has been emphasized that although the past tendency has been to regard evidence as falling within the Rules of Decision Act, this has not been universal and there is good authority to the effect that the Conformity Act is controlling in matters of evidence.[80] Several commentators, while conceding such tendency, have declared that this does not necessarily preclude the view that rules of evidence should be considered within the domain of procedural law.[81]

Another method used to determine whether the power granted under the federal act extends to rules of evidence has been the application of statutory canons of construction to the words of the act. Such words have been compared with the language in the prior Conformity Act; contrary conclusions, however, have been drawn from such comparison.[82] It has been suggested that the application of the principle of *ejusdem generis* to such words would operate to exclude rules of evidence.[83] On the other hand, it has been argued that since the only express limitation in the act is that the "rules shall neither abridge, enlarge, nor modify the substantive rights of any litigant," it was probably intended to include evidence.[84] Under this latter theory, the enabling statutes, containing similar provisions, of at least eight states, would be deemed to authorize judicial prescription of rules of evidence.[85]

In the light of previous findings, herein, first, that historically the courts had the power to make general rules governing *procedure*, and, second, that practically all of the enabling acts under consideration contain the words *"practice"* and *"procedure,"* construction of these terms is obviously demanded. Although a distinction between "practice" and "procedure" has been noted,[86] the former word shall be considered, for the purpose of this discussion, as included within the latter, an interpretation substantiated by authority.[87]

The statement recently made that "the general public has never really known what lawyers meant by the distinction between law and procedure, or, as it is more pretentiously put, between substantive and adjective law,"[88] did not go far enough. Ever since Bentham first noted such distinction,[89] lawyers themselves have had considerable trouble with it. The chief difficulty has been that the terms have been used in solving many different types of problems, and, has been observed, "a distinction used for such diverse purposes would naturally acquire diverse meanings, for that meaning would be adopted in each case which would best serve the purpose for which it was being employed."[90] To ascertain the meaning of "procedure" as used in the enabling acts, the purpose underlying the grant of power therein should be helpful. The objectives sought, in the case of the federal act, were uniformity and a simple flexible system of practice, and court leadership in developing a procedural system, all designed to increase the effectiveness of the machinery for the administration of justice.[91] A similar purpose underlies at least the more recent state acts conferring the rule-making power.[92] To serve such purpose a liberal interpretation of the terms in question seems desirable.

A definition which distinguishes substantive from procedural law on the basis that the former relates to rights and duties, while the latter refers to the means and methods by which those rights and duties are to be protected and enforced through the courts[93] would appear to be both a liberal and practical criterion, and one which lends to a conclusion that rules of evidence are included within "procedure."[94]

Cases involving the distinction between substantive and procedural law are numerous. In a number of

79. Wickes, *op. cit. supra*, note 67; Clark, also, recognized this problem when he stated that "if the Act does not apply, then a curious situation may result, since the admissibility of evidence in actions at law is now determined by the construction given one or the other of the Conformity Acts (Conformity Act or Rules of Decisions Act) . . . " *Power of the Supreme Court to Make Rules of Appellate Procedure* (1936), 49 HARV. L. REV. 1303, 1311, n. 24.

80. Callahan and Ferguson, *Evidence and the New Federal Rules of Civil Procedure*, (1936), 45 YALE L. JOUR. 622, 641; and Sweeney, *Federal or State Rules of Evidence in Federal Courts*, (1932), 27 ILL. L. REV. 394, 396.

81. Sunderland, *Character and Extent of the Rule-Making Power Granted United States Supreme Court and Methods of Effective Exercise*, (1935), 21 A. B. A. J. 404, 407; Callahan and Ferguson, *op. cit. supra*, note 80.

82. " . . . the present act uses a broader term in conferring power upon the Supreme Court than did the conformity act in prescribing the field within which state rules were to be followed . . . " Sunderland, *op. cit. supra, note* 81. *Cf.* Ohlinger, *Questions Raised by the Report of the Advisory Committee on Rules of Civil Procedure for the District Courts of the United States*, (1937), 11 CINN. L. REV. 445, 450, 451, advancing the opinion that the order in which the words in the Conformity Act used "permit of wider scope for the initial term 'practice'" than the phrase in the Federal Act.

83. Ohlinger, *op. cit. supra*, note 82. " . . . it can well be argued that it was the intent of Congress to limit the general term 'practice and procedure' to particulars of the kind set out in the preceding enumeration, that is, to matters *ejusdem generis* as 'forms of process, writs, pleadings and motions' and that the general term cannot be extended to include matters of jurisdiction, power, modes of proof, rules of evidence and substantive law."

84. Sweeney, *op. cit. supra*, note 80.

85. Arizona (Ariz. Sess. Laws, 1939, c. 8, p. 11); Colorado (Colo. Sess. Laws, 1939, c. 80, p. 264); Delaware (DEL. REV. CODE, 1935, Sec. 4643); Maryland (Md. Laws, 1939, c. 719, pp. 1520-1523); Nebraska (Neb. Sess. Laws, 1939, c. 30, p. 164); Pennsylvania (Pa. Laws, 1937, c. 91, p. 459); South Dakota (S. D. CODE, 1939, Vol. 2, c. 32.09 Sec. 32.0902); Texas (VERNON'S ANN. REV. CIVIL STATS. OF TEX., 1939 Supp., tit. 37, art. 1731a).

86. See, for example, Tyler, *The Origin of the Rule-Making Power and Its Exercise by Legislatures*, (1936), 22 A. B. A. J. 772, 773.

87. For definition of procedure as including in its meaning whatever is embraced by the three technical terms, Pleading, Evidence, and Practice, see Kring v. Missouri, 107 U. S. 221, 231, 232 (1882); for a view regarding procedure as including pleading and practice but not evidence, see Williams, *The Source of Authority for Rules of Court*, (1937), 22 WASH. U. L. Q. 459, 462.

88. Radin, *Achievements of the American Bar Association: A Sixty Year Record*, (1939), 25 A. B. A. J. 1007, 1009.

89. 1 BENTHAM, RATIONALE OF JUDICIAL EVIDENCE (1827) 5, n.

90. Sunderland, *Character and Extent of the Rule-Making Power Granted United States Supreme Court and Methods of Effective Exercise* (1935), 21 A. B. A. J. 404, 405-407; and see Davey, *Courts-Rules of Court-Power to Change or Modify Rules of Evidence*, (1938). WIS. L. REV. 324. Sunderland classifies the various types of cases where the distinction is made into five different general groups.

91. See authorities cited *supra*, note 18.

92. For example, the Arizona enabling act (Ariz. Sess. Laws, 1939, c. 8, p. 11) provides that the supreme court shall promulgate rules in judicial proceedings "for the purpose of simplifying the same and of promoting the speedy determination of litigation upon its merits."

93. See Hyde, *From Common Law Rules to Rules of Court*, (1937), 22 WASH. U. LAW QUART. 187, 204; and Paul, *The Rule-Making Power of the Courts*, (1926), 1 WASH. L. REV. 163, 235. For etymology of the word, see Millar, *Words and Institutions—Origin of Some Procedural Terms*, (1939), 25 A. B. A. J. 1023.

94. See Sunderland, *op. cit. supra*, note 90. Compare Shelton, *The Philosophy of Rules of Court*, (1927), 13 (Supp.) A. B. A. J. 3, 5, wherein Shelton, for years one of the foremost advocates in the American Bar Association of adoption by Congress of a statute similar to the present act mentioned a division of judicial procedure into two classes, in one of which, to be prescribed by the legislature, were included rules of evidence. Such a differentiation has not been followed.

these, statutes prescribing rules of evidence have been held merely to regulate procedure.[95] Few of such cases, however, relate to court rules of evidence prescribed under the rule-making power. In an 1831 decision, the United States Supreme Court invalidated a circuit court rule requiring a party's oath for the introduction of secondary proof of a writing, Justice Story declaring:

"However convenient the rule might be to regulate the general practice of the courts, we think, that it could not control the rights of the parties in matters of evidence, admissible by the general principles of law."[96] In a prior decision of 1826, the Court upheld a rule of the Ohio circuit court dispensing with proof of certain instruments unless an affidavit denying execution thereof were filed, Story emphasizing that if the "rule attempted to interfere with or control the rules of evidence it certainly could not be supported."[97] On the authority of the distinction made in these decisions, the Pennsylvania high court sustained a rule of a lower state court almost identical to that in the 1826 case.[98]

A rule of the Maine high court allowing the introduction into evidence of an office copy of a deed without proof of execution has been approved.[99] In a case often cited on the rule-making power, the Washington supreme court, in sustaining its own rule authorizing the taking of a deposition, declared:

"It seems plain to us that the taking of a deposition is an act in the procedure and practice before the courts. It involved the receiving of evidence before the courts, a matter for the courts to determine and which in no wise trespasses upon the substantive rights of parties."[100] However, in a later case, the same court, in "puzzling passages,"[101] agreed with the propositions both (1) that procedure includes whatever is embraced by the terms "pleading," "evidence" and "practice," and (2) that rules of evidence are substantive law.[102] A rule requiring an abstract of title to be offered when introducing a deed in evidence, however, has been held unreasonable.[103]

Although several of the foregoing decisions mention the "inherent power" doctrine, in most instances, state enabling acts are referred to as the basis for determining the validity of the state court rules involved. The Supreme Court cases are of questionable value as precedents; they were decided prior to the enactment of the 1842 statute conferring rule-making power on the Court, under which, as we have seen, the Court itself was reluctant to prescribe rules. Such overconservatism would be reflected in the Court's attitude towards rules of other courts. Moreover, these decisions conflict with recent cases, in which the Supreme Court asserted its power, even in the absence of an enabling statute, to change the common-law rule of evidence relative to the competency of a witness and also to admissibility of evidence.[104]

While other instances can be found where evidence and procedure have been identified,[105] opinions that rules of evidence do not fall within "procedure" are not wanting. Thus one commentator while conceding that most rules of evidence are procedural in nature, suggests that each rule should be considered separately since some are "clearly matters of substantive right."[106] His conclusion, however, that rules relative to privileged communications and shifting of burden of proof fall within this latter group is contradicted by well-considered cases.[107]

Reference should be made to a question posed whether a state statute delegating to the supreme court the power to make rules of evidence, which, when promulgated, would supersede conflicting common law and statutes, would be an unconstitutional attempt to delegate substantive law-making power.[108] This would seem to beg the primary question whether rules of evidence involve substantive law at all. If they do not, as the foregoing analysis would appear to establish, then the constitutional problem is identical with that relative to the power of courts to prescribe rules of procedure generally. The validity of such power has been acknowledged so often that any further discussion thereof is unwarranted,[109] except it may be recalled that Dean Wigmore even asserted that the legislature, federal or state, exceeds its constitutional power when it attempts to impose upon the judiciary any rules for the dispatch of its business.[110]

V.

Implicit in any question as to the extent to which courts under the rule-making power may prescribe

95. In Thompson v. Missouri, 171 U. S. 380, 385, 388 (1897) the Supreme Court held that a state statute fixing a rule of evidence regarding disputed handwriting was one merely regulating procedure; in Chicago v. Williams, 254 Ill. 360, 366, 98. N. E. 666, 668 (1912), it was held that under a constitutional amendment authorizing the legislature to create, and prescribe the *practice* of, a municipal court of Chicago, a statute requiring such court to take judicial notice of certain matters was authorized. See, also, a rule of this court relative to evidence: Civ. Pract. Rules of Mun. Ct. of Chicago (1933), 133.

96. Doe v. Winn, 5 Pet. 234, 243 (U. S. 1831).

97. Mills v. Pres., 11 Wheat. 431, 439 (U. S. 1826).

98. Odenheimer v. Stokes, 5 W. & S. 175 (Pa. 1843).

99. Sellars v. Carpenter, 27 Me. 497 (1847). Rule, however, found inapplicable to facts at bar. This rule still in effect—see *supra* note 59.

100. State *ex rel* Foster-Wyman Lumber Co. v. Superior Court, 148 Wash. 1, 14, 267 Pac. 770, 774 (1928).

101. Morgan and Maguire, *Looking Backward and Forward at Evidence*, (1937), 50 HARV. L. REV., 909, 934 n. 65.

102. State v. Pavelich, 153 Wash. 379, 382, 279 Pac. 1102, 1103 (1929).

103. Pelz v. Bollinger, 180 Mo. 252, 79 S. W. 146 (1904).

104. Funk v. United States, 290 U. S. 371, 54 Sup. Ct. 212, 78 L. ed. 269 (1933) (involving competency of wife to testify as a witness in behalf of defendant on trial for criminal offense); and Wolfle v. United States, 291 U. S. 7, 54 Sup. Ct. 279, 78 L. ed. 617 (1934) (involving privileged communication between husband and wife). Both of these cases were decided prior to effective date of Federal Act and neither involved rules of court.

105. For example, the American Law Institute deals with "mode of trial," "proof of facts," "witnesses," "evidence" and "oral evidence" in a chapter entitled "Procedure." RESTATEMENT, CONFLICT OF LAWS, (1934) c. 12, Secs. 594-598. It has also become uniform practice to place statutory rules of evidence with rules of pleading and practice as a part of the Code of Civil Procedure.

106. DAVEY, COURTS-RULES OF COURT-POWER TO CHANGE OR MODIFY RULES OF EVIDENCE, Vol. 1938, 324-328.

107. See Wolfle v. United States, *op. cit. supra*, note 104 and text. And Sackheim v. Pigueron, 215 N. Y. 62, 73, 109 N. E. 109, 112 (1915) where the court upheld an act prescribing the burden of proof of contributory negligence as one establishing a rule of evidence and order of proof and included within the term procedure.

108. Williams, *The Source of Authority for Rules of Court Affecting Procedure*, (1937), 22 WASH. U. L. Q. 456, 462, n. 10.

109. For studies on the constitutionality of rules of court, see the following: Hibschman, *The Power to Regulate Court Procedure—Is It a Legislative or a Judicial Function*, (1937), 71 U. S. L. Rev. 618; Wheaton, *Procedural Improvements and the Rule-Making Power of Our Courts*, (1936), 22 A. B. A. J. 642; Gertner, *The Inherent Power of Courts to Make Rules*. (1936), 10 CINN. L. REV. 32; Pound, *Regulating Procedural Details by Rules of Court*, (1927), 13 (Supp.) A. B. A. J. 12, 14; Scott, *Actions at Law in the Federal Courts*, (1924), 38 HARV. L. REV. 1; and Morgan, *Judicial Regulation of Court Procedure*, (1918), 2 MINN. L. REV. 81.

110. Wigmore, *All Legislative Rules for Judicial Procedure Are Void Constitutionally*, (1928), 23 ILL. L. REV. 276; but see Hibschman, *op. cit. supra*, note 109, who takes issue with Wigmore's contention.

rules of evidence is the query as to the extent to which they *should*. The diverse reasons advanced why rules governing procedure generally should be prescribed by courts instead of by legislatures have been stated so well that it is unnecessary to repeat them.[111] The same arguments apply with equal force to rules of evidence.

An added reason exists in the case of the federal courts. The problem of conformity versus uniformity in federal rules of evidence has been a trying one.[112] That conformity in evidence today is only an approximation, and that there is a decided trend toward uniformity where the field has not been pre-empted by statute, has been emphasized and favoured by the consensus of authoritative opinion.[113] That the Supreme Court was best qualified to further this change in policy was suggested prior to the adoption of the federal act.[114] The act itself permits of either conformity or uniformity, or a partial use of either. Instead of providing a detailed code of evidence, (which has been branded as impracticable and undesirable),[115] the Advisory Committee prescribed a few rules for specific instances and a general one to cover the great body of evidence. Rule 43, thus adopted, favors uniformity, and yet permits of conformity where necessary.[116] It has received favourable comment for such approach.[117] Radin designates the provisions in the rules simplifying the law of evidence together with those expediting appeals and assimilating equity and law procedure as "the chief characteristics of the new rules."[118]

The rules of evidence thus adopted, however, have been branded as inadequate, and additional rules suggested.[119] Thus it has been proposed that the *soi-disant* "dead man" statutes be eliminated, and a rule proposed by the Advisory Committee substituted, and that there should be formulated rules relative to impeachment of witnesses generally, statements or declarations of persons unavailable as witnesses, judicial notice, and to matters of common knowledge, as well as a rule prohibiting the exclusion of formerly privileged communications.[120]

What then are the conclusions that may be drawn from the foregoing analysis?

First, while the historical criterion may demonstrate that the power of the courts to make rules governing procedure has been considered an inherent one from a date considerably prior to the adoption of the American Constitution, its application alone, without consideration of other factors, is insufficient to establish whether courts may prescribe rules of evidence under such power.

Second, due in part to the inconsistent attitude of the courts, in, on the one hand, declaring the rule-making power to be inherent, and, on the other, referring to the enabling acts as the source of this power, such statutes must be scrutinized in any inquiry as to the scope of the power. The failure of most enabling statutes specifically to name rules of evidence, however, is not determinative; the construction of the term ("practice" and) "procedure," common to most of such acts, is required.

Third, those rules of evidence prescribed by the courts under the rule-making power offer some tangible but not conclusive proof that "procedure" is deemed to include rules of evidence generally. Their effectiveness as precedents is impaired by (1) their limited number and scope; (2) the fact that practically all of them have been prescribed pursuant to enabling acts rather than under the "inherent power" theory; and (3) by the uncertainty still existing, as evidenced by the attitude of the Advisory Committee, whether they are properly included within the scope of such enabling acts. Nevertheless, the examples set by the new Federal Rules, the state rules copied after them, and the action of those states which have permitted the promulgation of theretofore existing statutory rules of evidence as rules of court are encouraging. They clearly demonstrate that the trend is decidedly toward a liberal interpretation of the enabling acts to include rules of evidence.

Fourth, analysis of the construction placed upon the enabling acts conferring the rule-making power, the rules of evidence prescribed under the power, and the term "procedure" leads to a conclusion, first, that the power of the courts to prescribe rules governing procedure, either considered as an inherent one or as derived from the enabling acts, includes within it the power to prescribe rules of evidence, and second, since no sound authority exists for excluding any particular class of rules of evidence, such as, for example, privileged communications, from the procedural realm, the courts may prescribe rules of evidence to the same extent as legislatures have in the past.

Fifth, consideration of the reasons that may be advanced as to the extent to which the courts should prescribe rules of evidence under the rule-making power points unquestionably to the desirability of a more extended exercise of such power.

Finally, relative to the ultimate conclusion of this paper, it is urged that the following advice given many years ago by Dean Pound be heeded:

> ". . . Many rules of evidence are in the interest of expedition and saving of time, rather than of protecting any party; prejudice to the dispatch of judicial business is the objection rather than prejudice to a party. In all such cases how far the rule should be enforced in any cause should be a matter for the discretion of the courts. . . ."[121]

As and when the courts under the rule-making power prescribe rules of evidence to the full extent and, as a concomitant to the exercise of such power, the use of discretion in the application of such rules is permitted, then will the words of Bentham first quoted approach closer to truth than at any time since the days of that great reformer.

111. For detailed discussion of these reasons, see the authorities cited *supra*, note 109.

112. See Morgan and Maguire, *Looking Backward and Forward at Evidence*, (1937), 50 HARV. L. REV. 909; Rubison, *Changing Rules of Evidence in the Federal Courts*, (1934), 1 U. OF CHICAGO L. REV. 785; and Hinton, *Court Rules for the Regulation of Procedure in the Federal Courts*, (1927), 13 (Supp.) A. B. A. J. 13.

113. See Callahan and Ferguson, *Evidence and the New Federal Rules of Civil Procedure*, (1936), 45 YALE L. J. 622, 644; and Wickes, *The New Rule-Making Power of the United States Supreme Court*, (1934), 13 TEX. L. REV. 1, 18.

114. Sweeney, *Federal or State Rules of Evidence in Federal Courts*, (1932), 27 ILL. L. REV. 394.

115. Wigmore, *A Critique of the Federal Court Rules Draft*, (1936), 22 A. B. A. J. 811, 813.

116. For cases involving the operation of Rule 43, see the following: Aetna Life Ins. Co. v. McAdoo, 106 F. (2d) 618 (C. C. A. 8th, 1939); Penn v. Automobile Ins. Co., 27 Fed. Supp. 337 (D. C. Ore. 1939).

117. Holtzoff, *Twelve Months Under the New Rules of Civil Procedure*, (1940), 26 A. B. A. J. 45, 49.

118. Radin, *The Achievements of the American Bar Association: A Sixty Year Record*, (1939), 25 A. B. A. J. 1007, 1010.

119. Wigmore, *op. cit. supra*, note 115.

120. Callahan and Ferguson *Evidence and the New Federal Rules of Civil Procedure*, (1937), 47 YALE L. JOUR. 194, 195-213.

121. Pound, *Some Principles of Procedural Reform*, (1910), 4 ILL. L. REV. 388, 400.

WALTER SCOTT FENTON
1886—1940

RARELY has death removed from the councils of the American Bar Association a man as active and influential in its work as Walter S. Fenton of Vermont was, to the day of his death on July 12th. Rarely has death taken from our midst an active leader who will be so gravely missed.

During more than a dozen years, his virile and vibrant personality has been a dynamic factor in Association policies. He served three years on the Board of Governors, was a member of the House of Delegates from its founding in 1937, was never too busy to do valiant work for the Association he loved. Faithful to his deep convictions, untiring in the service of clients irrespective of their means to pay, loyal always to his friends and to his word when given, always ready to do battle for fair and common sense ways of dealing with problems, he was a first citizen of Vermont as well as one of its best loved lawyers. But for the warning of undermined health, he would in all probability have been chosen ere this to the highest honor in the gift of American lawyers, to which his long service gave him clear title.

In a true sense, he was exemplar of the American lawyer at his best—the rugged, self-reliant, courageous and public-spirited lawyer of a typical small city, where lawyers lead their communities and hold high the standard of fidelity to American institutions. Small wonder that for the last sad rites of such a lawyer, men and women came from all over the state and from nearby states; small wonder that everyone recognized it to be fitting that the memorial services for such a lawyer should be closed with the stirring singing of "America," ere this gallant and friendly gentleman was laid to rest on a beautiful plateau within sight of his birthplace, in the heart of the Green Mountains he loved.

LAW OFFICE ORGANIZATION, IV*

By Reginald Heber Smith
of the Boston Bar

IN a firm the partners are the supreme authority. Such a group is admirable for determining policies but not for executing them. The work of a law office needs executive direction. Some firms have an office manager, others a managing clerk, others a managing partner. We prefer the last because a managing partner can attend all partners' meetings, he is close to his partners and knows their wishes, and inevitably he possesses an authority that one who is not a partner cannot have. In this article, for simplicity, the word "manager" will be used to designate the person entrusted with and exercising executive authority. The manager must keep track of his time spent for the firm just as time spent for clients. He does this by entries on the bottom lines of his time sheet. As we shall see a little later, this time is in effect charged to the firm and in the final reckoning the manager is duly paid for it by the firm.

Financial Records

The firm's key financial records (like those of any business) will be two: operating statement showing all receipts and disbursements and balance sheet showing all assets and liabilities. These statements should be prepared at the end of every month. A bookkeeping machine is generally an economy because it produces the figures with maximum promptness and automatic accuracy. Printed forms for these reports can be made up so that all Accounts has to do is type in the figures at their appropriate places.

These accounts can be kept on a cash or accrual basis. Cash is simpler, accrual far more accurate. In any firm with a number of partners whose shares of profits may be changed somewhat from year to year, the accrual method is the only honest one. Assume that an important case is finished in the last month of the firm's year. The firm's bill goes out promptly. On the cash basis the fee will or will not be a part of that year's business depending on whether the client happens to pay the bill before or after the year-end. On the accrual basis the firm is master in its own house, it determines when a case is finished and may be properly billed, and when billed the fee is part of the revenue of that year.

The accrual system for use in a law firm is simpler than it may sound. It is desirable that a law firm should keep its liabilities at a minimum by paying its bills on the nail. Hence it will have few Accounts Payable. If the firm is holding monies due clients, those are accounts payable, but if the amounts are substantial or are likely to be held for some time, they should be segregated and deposited in a separate bank account. The other items on the liability side may be reserves for taxes, undivided profit (or loss) and capital which the partners have paid into the firm.

Firm Capital

The limitations of space prohibit more than a few words about firm capital. Lawyers should realize that it takes capital to run any firm, large or small. The reason is that when a case is accepted, expenses that have to be paid are incurred at once and continue—salaries, rent, telephone, stationery, postage, light, etc.—but the client pays his fee only at the end. In the meantime the cost of getting the work done has to be financed. Checks cannot be drawn on an empty bank account. Multiply one case by fifty or five hundred and the amount involved begins to get substantial. The same is true of equipment. A typewriter may last three years but it has to be paid for at the beginning and not the end. So with furniture, filing cabinets, and the more expensive bookkeeping machines. Law firms are prohibited by custom from borrowing at banks. Their only recourse is themselves. Firm capital should be fixed at a figure that will carry the firm's load and it should be contributed by the partners in the same proportions as their shares in profits. The alternative is to plow profits back into the firm. A partnership cannot hold back part of its net earnings as can a corporation. All its net earnings are distributable to the partners and they are so taxed. But a partner can be paid his share of net earnings (profits) and he can pay that back into the firm as his contribution towards firm capital. A firm should pay to each partner interest on the capital paid in by him.

On the asset side we will have cash in bank, a small amount of cash in the office, cash advanced for clients and due from them, and equipment at cost, less reserve for depreciation. Depreciation rates are now pretty well standardized—three years for typewriters, five years for accounting machines, eight years for office furniture, filing cabinets, safe cabinets, etc. Many articles will last longer but it is prudent to have them off the books by the stated time.

Accounts Receivable

The chief item on the asset side will be accounts receivable. These are bills sent out and not yet paid. Since the accrual system treats these bills as firm assets, some system of reserves is necessary. The following system has been tested and has worked out in practice. A bill is an asset at full face value for three months; it is a "current" account. If not paid within three months, it becomes an "overdue" account and a 20% reserve is automatically set up. At the end of eight months, if still unpaid, the bill becomes a "suspense" account and a reserve of 60% is automatically set up. Suspense bills are periodically reviewed by management and by the partners. They are definitely red lights. They may signify that the client is dissatisfied with the work or with the bill. The firm looks to the responsible attorney to find out and straighten it out if he can.

When it appears that a bill is not going to be paid it is transferred to "bad" accounts and disappears from the firm's assets. Since the records about the work of the attorneys that we considered in the preceding article were made up when the bill was sent out and in the faith that it was good, what happens when a bill goes "bad"? The answer is that the record entries are reversed.

In the case we used in the third article as an illustration, Partner A had a business credit of $200 be-

*This is the conclusion of a series of articles which began in the May number of the JOURNAL.

cause that was the amount of the bill. That is cancelled. He had a profit credit of $100 because the time cost of the job was $100. His profit credit is cancelled and, further, he takes a loss. The cost of the job still is $100, the client has paid zero, there is a loss to the firm of $100 and that must be borne by the responsible attorney in his individual record.

What happens to the prorating credits? They are cancelled. The responsible attorney loses his credit entirely. The hours worked on that case are deducted from his total of hours worked for clients. Work done for a client who does not pay is not productive work. From the firm's point of view it had better never have been done. It is effort gone to waste.

The situation of the two juniors who worked on the case is different. Neither of them was the responsible attorney. They had nothing to say about accepting the case. They worked on it because the partner told them to. Their prorated credit is gone because that was based upon the bill and the bill has become "bad", but justice requires that they be protected at least to a fair extent. They are protected to the extent of their time cost. Junior B had devoted to the case time worth at cost $62.50. That amount of credit is retained on his record. The account of the responsible attorney is debited $62.50. Junior C receives the same protection.

If all this seems pretty rough on the poor responsible attorney, bear in mind that the firm is taking into account (and in part will pay him for) the business he has brought in and the profit resulting from it. Accordingly he must take the bitter with the sweet and stand his losses as well as enjoy his gains.

Office Details

Only a word need be said about the Operating Statement. On the disbursements side it will set out salaries paid, rent, postage, and all items of expense. On the receipts side, income on the accrual basis will be the face amount of the bills sent out. From this will be deducted additions to reserves for "overdue" or "suspense" bills. The difference between receipts and disbursements is undivided profit (or loss). In arriving at this figure it is convenient to enter drawing allowances paid to partners as the last item among the expenses.

The use of a printed form saves much typing. By having ruled on the right hand side of the report four vertical parallel columns the statement can readily give (1) the figures for the current month, (2) cumulative for the year to date, (3) for the same month a year ago, and (4) cumulative for the same period a year ago.

These comparisons are illuminating. They are something the manager will constantly study. Since all of us are bedevilled by a crazy calendar in which one month has five weekly pay days and another four, we have adopted the expedient of paying salaries to everyone in the office (stenographers and clerks as well as lawyers) once a month. Not only is it cheaper and quicker to draw one check than four or five but cost of salaries in any month is truly comparable with that of any other month. An increase means a genuine increase and not that the calendar is playing tricks. With salaries (the largest expense item) ironed out, with rent (the next item) ordinarily on a monthly basis anyhow, and with most other expenses fairly steady (except light which has a seasonal fluctuation) any month can readily be compared with any other.

We have been considering the firm's control records dealing with *money* and now we turn to the control records dealing with *time*. This is just as important, if not more so, because a law office exists to produce work in behalf of clients, and the time that has been spent towards bringing the clients' cases along to completion is actually the firm's biggest asset.

Earlier articles have shown the lawyer entering the time spent on each case on his daily time sheet. After each day the daily time sheets go to Accounts which totals the man's time. At the end of the month it is known how many hours he worked, how many hours every other man worked, how many hours the whole staff of attorneys worked.

That number of hours of each attorney can be converted into value *at cost* simply by multiplying his hours worked by his cost per hour. This is done in connection with every man's time.

Thus the value at cost of the hours produced by the firm for clients during the month is readily arrived at. This figure is exactly like the manufacturer's figure for inventory at cost or work in process at cost.

Each month the new hours worked are added to the existing inventory of hours worked for clients but not yet billed. When a case is billed the hours worked on that case are deducted from inventory. Inventory is always a net figure, constantly being added to and as constantly being drawn down from. Inventory is carried in hours and in dollars. The conversion of hours into dollars is on the basis of cost per hour.

A record of each man's production is kept. Such records tell the manager when one lawyer has too much to do and another too little. The manager does what he can to equalize the load. Often it is enough to call the fact to the attention of the partners who then begin to delegate work to the man who has the time for it.

Time records are quite simple. All that needs be added is that here are kept the records of time "credits" and "debits" about which we have spoken. When the manager is attending to the firm's affairs he is not working for a client. His time must be entered but it is not included in inventory because inventory consists of hours worked for clients and for which the firm expects to be paid. The manager's time is charged to an account called "Firm." The hours spent multiplied by his cost per hour is the credit figure to which he is entitled. When a bill was not paid and went "bad" the time the juniors had spent on the case became a credit to them at cost. That credit is carried in the time records and so is the corresponding debit to the account of the responsible attorney. In the second article we described a partner who spends part of his time in helping juniors. He has entered his time. It is a charge against the firm. His time at cost is the credit to which he is entitled and that is kept as a part of the time records.

The heaviest responsibility placed on system and management comes at the end of the year. Parenthetically we have found that the calendar year is an unsatisfactory period for firm accounting. Most clients keep their books on a calendar year basis; most tax returns are made on a calendar year basis. January is one of the busiest months and the partners have no time to devote to their own affairs. At that season they just are not interested, they do not want to be bothered, and yet at some the business, the affairs, the problems of the firm and of the individuals in it need and are entitled to have their very best consideration.

A fiscal year beginning July 1 and ending June 30 works well. In the practice of law there is a definite seasonal trend. Most courts convene in September and do not adjourn until the end of June. In the summer

months, business generally is stagnant and many clients are on vacation. Things pick up, cases begin to be received in September and from then on through June which is the natural climax to the lawyer's year. At the end of June partners do have the time and the inclination to consider their own affairs and all matters pertaining to the well-being of their office and their employees.

General Comment

In the first of these articles it was stated that the fundamental purpose of all system and organization was to enable a group of lawyers to be associated together, to permit a fair degree of specialization with its resultant efficiency and economy, to even out inequalities between men having too many clients and too much work and those having fewer clients and too little work. The whole purpose is to let the work in the office flow where it will be done best, most quickly, and at lowest cost. The man having too much business must not be afraid to part with it, he must be encouraged to do so, and when he does so the system must protect his natural and proper interest in the case and the fruits thereof.

That is the critical test and any system faces an awkward factor arising out of the nature of a partnership. Every partner has a percentage or a share of profits: those shares must total 100%. If a partner is entitled to be increased by 1%, some other partner must be decreased by 1% and that is where the rub comes. This is best overcome through records and reports which are impersonal but which indicate plainly what adjustments among partners are in order.

It has been our experience over a number of years that all such adjustments can be made in good spirit and without rancor, in a very brief space of time, and by unanimous vote of all partners *provided* thorough and painstaking work has been done in advance by the manager.

All the records showing what every partner has done exist. They need only to be assembled. At the end of the fiscal year four facts about each partner are known:—

1. What he has received from the firm (his drawing allowance plus his share of profits for the fiscal year).
2. What he has contributed to the firm through work (this is the total of his "prorated" earnings plus any time charged to the firm).
3. What he has contributed to the firm through business brought in (this is the total of bills sent out during the fiscal year in cases in which he was responsible attorney less any bills that went to "bad" during the fiscal year).
4. What he has contributed to the firm through the profit on such business (this is the excess of bill over cost less the loss when cost exceeds bill or the bill has gone to "bad" during the fiscal year).

Just as partners' shares in profits are expressed in percentages, so these figures must be converted into percentages.

This can be illustrated by assuming a firm with four partners, using round figures, and we will do the sum for Item 2—Work Done.

Partner	*Value of Work Done*	*Per Cent*
A	$20,000	50. %
B	10,000	25.
C	7,500	18.75
D	2,500	6.25
	$40,000	100. %

Exactly the same thing is done for business credit and profit credit. Again, this will be illustrated by using the same four partners.

	Business Credit		*Profit Credit*	
Partner	*Amount*	*Per Cent*	*Amount*	*Per Cent*
A	$20,000	40%	$4,000	40%
B	15,000	30	2,000	20
C	10,000	20	3,000	30
D	5,000	10	1,000	10
	$50,000	100%	$10,000	100%

We think these three different kinds of contribution by a partner to the firm are not of equal importance. We think work done is most important, business credit next, and profit credit last. To reflect the different degrees of importance we "weight" the percentages. (Any firm is entitled to come to its own decision about this and to use any weighting it likes.) Work done is weighted at 6 (multiplied by 6), business credit is weighted at 3 and profit credit at 1. The total is divided by 10. The result is still a percentage figure and that figure we call "Value Produced." The following table shows the mathematics:

	Work done		*Business Credit*		*Profit Credit*			*Divided by 10 Gives Value*
	1.	2. 3.	4.	5.	6.	7.		
Partner		% ×6	%	×3	%	×1	3+5+7	*Produced*
A	50.	300.	40	120	40	40	460.	46.
B	25.	150.	30	90	20	20	260.	26.
C	18.75	112.50	20	60	30	30	202.50	20.25
D	6.25	37.50	10	30	10	10	77.50	7.75
	100.	% 600.00	100%	300%	100%	100%	1,000.00	100.00

What each partner has received from the firm is reduced to a percentage and that figure is called Value Received. Let us also make that computation:

	Received from the Firm	
Partner	*Amount*	*Per Cent*
A	$10,000	40.
B	6,000	24.
C	5,000	20.
D	4,000	16.
	$25,000	100%

The manager's report will end up with two final figures for each partner—i.e. "Value Produced" and "Value Received." Statistically each partner has produced more than he has received or has received more than he has produced. In the former case he has a credit and in the latter case a deficit. We can now state these final figures:

Partner	*Value Produced*	*Received from Firm*	*Credit*	*Deficit*
A	46. %	40%	+6	
B	26.	24	+2	
C	20.25	20	+0.25	
D	7.75	16		—8.25
	100.00%	100%	8.25	8.25

There are ups and downs in law practice so that a one-year record is too short a time on which to base a judgment. Hence exactly the same figures are made up in *cumulative* form and embracing all years for which we have these records.

These two tables (one giving the annual and the other the cumulative figures) are typed and a copy goes to every partner. He thus has the whole story and he has exactly the same evidential material as has the manager. The manager writes and sends to each partner a short report suggesting that one or more partners have their shares in profits increased and others accept decreases. The partners meet and customarily the report is accepted without debate. That fixes the share in profits of each partner for the *next* fiscal year. Having gotten over the tough part the partners can then relax and enjoy a squabble over whether the youngest junior shall have any raise in pay and if so, how much.

As to juniors, the manager prepares somewhat simi-

lar tables but they are simpler. Figures about juniors need not be converted into percentages and there need be no weighting. The record sets out what each junior has earned by work done (measured by prorating), business credit, profit on such business, hours worked, value of hours produced (hours worked multiplied by cost per hour) and present salary.

It can readily be argued that all the qualities and values of a lawyer cannot be caught in a statistical net no matter how finely spun. That allegation is conceded. But the question is, what better method is there? It is impersonal, it is open and above-board, it does yield a vast amount of information, and it has been assembled in the manner which the partners themselves have decided to be as fair as they can make it and which they have incorporated into their partnership articles. After prescribing the method, the partnership articles do not say that the statistical tabulations are conclusive but that they shall be considered "as substantial evidence."

The figures are not given literal application. If a partner has a credit (excess of value produced over value received) of 2 points, that does not mean that he shall at once have his share of profits increased 2 points. But if, year by year, the partner has been maintaining a credit it is evident that he should have some increase.

Furthermore, anyone who deals with such figures is bound to be impressed by the fact that while the figures for one year are an inadequate base, the cumulative figures as they are kept year after year grow progressively more accurate until they do approximate the truth and afford an adequate basis for judgment by a group of partners whose intention and desire is to deal justly with one another.

With their internal affairs settled the partners can depart on vacation. It remains the manager's job to get out the Annual Report. This report contains the records of what the firm has done during the year and its cumulative records; and the individual records for each attorney and his cumulative records. The Annual Report serves as a convenient repository for all the essential facts about the firm's life. Where tables of figures may be hard to grasp, they are supplemented by charts. And the manager seeks in the text of this report to point out the high-lights of the fiscal year just closed, the weak spots and how they may be minimized and the good points and how they may be made better. A number of copies of the Annual Report are typewritten and then are circulated among all the partners.

In the scope of these articles it has not been possible to include every detail and it has been necessary to leave out some extensions and refinements. That is not important because the articles are not the last word on the subject; they are, at best, only one of the first words on the subject and may serve to arouse interest and elicit comments and suggestions by others.

It is believed that the basic principles herein set forth will be found helpful to any firm that is concerned about its office system and organization. The exact way in which the principles can best be adapted to the requirements of any particular law office is for that firm itself to determine.

IDEAS AND THE LAW*

ALBERT J. HARNO
Dean, College of Law, University of Illinois

IT is a common fault to mistake platitudes for ideas and thence to pass them off with oracular finality. Ideas, I realize, are a rare phenomenon, and I stand in dread of uttering oracular platitudes. Here then is a dilemma. I hope, though, I may be able to bring before you some views which will have enough of the tang of life in them to interest you. And first I wish to explore a bit further the subject of ideas, and their relation to law and lawyers.

Ideas are the milestones of history. In fact, I believe history should be taught in terms of personalities and ideas and particularly as a succession of ideas, for it is because of their ideas that significance is attached to the personages of history. Ideas make their appearance rarely enough in any field, but in the law they emerge most slowly and painfully. The law tends to shackle our minds. Lawyers think, let no one doubt that, but our thinking is tradition-bound; our thoughts pace within the walls of a prison. The end of the lawyer's research for the most part is to find what other lawyers and judges have said about the question under investigation. In searching for precedent the lawyer works diligently; he is discerning; he is ingenious and often brilliant in making close distinctions; he reasons well by analogy; but the ambit of his thinking is narrowly confined. Imagine a lawyer on some bright morning greeting a startled world with the announcement that he had discovered a new trait in a corporation or a new element in the definition of a contract! "That is not fair," you will say; "the law is not a field yielding to discoveries." But are we quite clear that this is a valid assumption? May it be that the legal field is not infertile, but that our minds, fettered by legal tradition, are insensitive to the potential discoveries that lie there? No one has ever doubted the intellectual fiber of the Chinese mind, but the Chinese have contributed little to the advancement of science. A long-standing and pervading philosophy has for them blocked the path that leads to scientific research.

The law is an agency established to assist society in solving human problems. Its content is substantive and adjective. The substantive part consists of precepts or principles which are designed to restrain, guide and control individuals in their conduct. When friction between individuals exists and controversy arises, these precepts or principles come into play along with others to guide the judges in reaching a settlement. The adjective part of the law involves the procedures employed in bringing about the settlement. But whence came these precepts and procedures, and what right have we to assume that they are designed to give wise counsel in the solution of human problems? Is it clear even that we have set up adequate means to determine what the problems are that we are attempting to solve?

The materials of the law are, in the main, of two types, judge-made law and legislation. Judge-made law is made up of a series of isolated decisions. Since each decision bears only on the special facts in controversy, it serves as precedent for subsequent issues only when it can be brought to bear on them through reasoning by analogy. Now reasoning by analogy is always a delicate and ticklish procedure. And by what token can we assume that the judge on whose decision we rely understood the significance and the implications of the problem before him, and that he solved it wisely? Do not misunderstand me; I am not deriding precedent.

*Letter to the Law Alumni of the University of Illinois.

I wish merely to say that we overstress it. Each separate decision by a court should be regarded as a matter *sui generis*, which, indeed, it is. Viewed in this light each legal controversy involves a study of all the factors that bear on it to the end that we may have an understanding of the problem it presents, and that we may reach a wise solution of the problem. In this process reasoning by analogy has a place, but research on the problem presented should not be confined to a search for precedent. Solution should be sought in the light of the existing influences, social and economic, that make for a wise decision. Thus contemplated, the solution of every legal problem is attended by an element of discovery.

Although the opportunities for research and discovery in judge-made law must ever be restricted, since each decision bears only on the particular facts in controversy, there is a comparatively wide range of action open for research in the field of legislation. Legislation may be comprehensive and the variety of legal and social situations that can be improved and corrected through wise legislation is well-nigh limitless. But legislative enactments should be preceded by a thorough understanding of the social problem for which relief through legislation is sought. May we take for illustration the situation as to organized theft. We have laws, of course, bearing on larceny, but they are quite inadequate for this problem. In *Theft, Law and Society*, Hall has shown that the problem of organized stealing centers in the "fence," the professional receiver. Again, we have laws bearing on receiving of stolen goods, but these were evolved during an earlier and less complex period of history and their meshes are not fine enough to catch the professional receiver. If the object of legislation is to aid society in solving its problems, it would seem clear that we must first find out what the problem is before passing a law, and this may involve venturing down into the dust of life and even into the burrows of the underworld.

The concept of the corporation ushered in a new era in business. That truly was an idea that should rate as one of the milestones of history. By means of the corporate device it became possible to carry business programs to proportions previously undreamed of. Laws were enacted in all states and, in fact, in all civilized countries, permitting the organization of corporations, and various jurisdictions even competed with one another in offering inducements to them. During this period of expansion little or no attention was given to the fact that the almost unrestrained development of corporations was creating a social and economic problem. In *The Modern Corporation and Private Property*, Berle and Means showed that thirty-eight per cent of the business wealth of the country, aside from banking, was concentrated in two hundred large corporations, and that these corporations were dominated by a small group of individuals who actually held only a small portion of the stock. In this structure the great army of stockholders had little influence in the management. When the crash of 1929 came, the useful corporate device very likely assumed for them the proportions of a Frankenstein monster.

I am unable in the compass of this letter to expand these views. It would seem clear that law does not function in a vacuum. It deals with human problems and is always closely related to and affected by other factors, psychological, social or economic. We must understand these factors before resorting to law. The Eighteenth Amendment was repealed because it was not in accord with the views of the people. Perhaps if a better analysis had been made before it was passed, we might have saved ourselves a good deal of trouble. A field which is almost untrod territory is that of preventive justice. Preventive medicine has made much progress. What a boon it would be to criminal law administration if we had a carefully-planned program of crime prevention!

The lawyer stands in a strategic place in the affairs of the nation. Its welfare is dependent on its having wise laws and on their wise administration. The lawyer dominates the growth and development of judge-made law. His is the dominant voice in the enactment of legislation and in its administration. What is more, his is often the deciding voice in the development of community—city and county—projects. His attitude and outlook tend to shape the trend of public—community, state and national—affairs. In an era of specialists he should be a synthesizing force. Law spreads over the whole of society and permeates all of its affairs. It is the lawyer's responsibility to furnish the talent to overview the whole structure. His materials are not law alone, but all the factors that go toward shaping the law, for, after all, law is part of the living tissue of society.

Finally, if these statements are valid, have they not some pertinent implications for legal education? Gradually some coherence is coming out of a nebulous idea. We have talked about students having a college education before beginning the study of law. We have insisted, rather vaguely I believe, that the lawyer should have a cultural education. What we have missed is that the disciplines emphasized in his cultural education, when brought into proper focus and coordinated, are the ones needed for the training of a lawyer; they are needed to give him perspective on and an understanding of the law. In the years immediately ahead two factors, I believe, will be stressed in legal education. We will emphasize quality in students as a condition to admission to law training and particularly as a condition to graduation, and we will seek to fuse the disciplines most closely related to law and law training into a coordinated program of legal education.

GARARD COLLEGE—PHILADELPHIA
One of the most unique as well as one of the richest institutions of learning in the United States

BAR INTEGRATION, ITS PRESENT STATUS AMONG THE STATES

THERE has been prepared by the Bar Association of Tennessee an act to integrate the bar of that state. The pamphlet prepared by the Bar Association of Tennessee, explaining the proposed act and the idea of a unified state bar, contains some interesting information which should be of general interest to the profession throughout the country. The "explanation" of the proposed act first asks the question: "What is meant by a unified bar?" and answers the question as follows:

"The bringing together into one association all lawyers of the State who have a license to practice. It is an all-inclusive, self-governing body, supervised by the Supreme Court which has inherent power to govern and control the conduct of all lawyers."

It is explained that the integrated bar would be accomplished by the enactment by the legislature of the proposed "State Bar Act." It is further explained that similar legislation has been passed in twenty-four states, as follows:

	Adoption Date		Adoption Date
North Dakota	1921	North Carolina	1933
Alabama	1923	Washington	1933
Idaho	1923	Louisiana	1934
New Mexico	1925	Kentucky	1934
California	1927	Oregon	1935
Nevada	1929	Michigan	1935
Oklahoma	1929	Missouri	1935
Mississippi	1930	Nebraska	1937
South Dakota	1931	Virginia	1938
Utah	1931	Arkansas	1938
Puerto Rico	1932	Texas	1939
Arizona	1933	Wyoming	1939

In listing "some of the accomplishments" of a unified bar, it is stated that the move would result in:

1. Better trained men seeking admission to practice.
2. Increased confidence between the public and Bar.
3. Higher standards of ethics.
4. Achievement of reforms sought by the profession, because of a new spirit and unity, and because of the activities of a full-time secretary.

It is further stated that none of the 24 states listed have ever returned to the voluntary plan of bar associations. The unified state bar would consist of every person engaged in the practice of law in the state who would be required to enroll as a member. It is pointed out that there are approximately 3000 lawyers in Tennessee, but of these only 925 are members of the state bar association. The dues of the state bar association are now $5 per member giving in 1940 an income for the association of $4625. The proposed act fixes the annual fee as $2, which would give the unified bar an income of $6000 per year. It is further stated that a committee, appointed for the purpose, has after investigation reported that legislation fixing such requirement of a fee would be constitutional.

The pamphlet lists some leading cases upholding bar integration as follows:

Capps v. Gore, (Ky.,) 21 S.W. (2d), 267;
Talbott v. Park, (Ky.,) 76 S.W. (2d), 600;
Commonwealth ex rel Ward v. Harrington, (Ky.,) 98 S.W. (2d), 53 (1936);
In re Sparks, (Ky.,) 101 S.W. (2d) 194 (1936);
Dreidel v Louisville (Ky.,) 105 S.W. (2d) 807
Drane v. Yonts (Ky.,) 503, S.W. (2d) 1186;
Re: *Integration of Nebraska State Bar Association* . . . (Neb.) 275 N.W. 265, 114 A. L. R. 151-161.

Annotation, *"State Bar created by Act of Legislature or Rules of Court;* Unified Bar, 161 A. L. R. 173.

The draft of the proposed bill to integrate the bar is set out as follows:

"AN ACT authorizing and providing for the adoption and enforcement by the Supreme Court of Tennessee of rules and regulations defining the practice of law, prescribing a code of ethics governing the professional conduct of attorneys at law and a code of judicial ethics; establishing practice and procedure for disciplining, suspending and disbarring attorneys at law; providing for the creation, government and conduct of the Tennessee State Bar; requiring all persons practicing law in this State to be members thereof; prescribing fees to be paid for the administration of this Act, and providing for the collection and disbursement thereof.

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF TENNESSEE, That the Supreme Court of Tennessee shall be authorized from time to time to adopt and promulgate such rules and regulations as the Court may see proper:

(a) Defining the practice of law;

(b) Prescribing a code of ethics governing the professional conduct of attorneys at law, and a code of judicial ethics;

(c) Prescribing procedure for disciplining, suspending, and disbarring attorneys at law;

(d) Organizing and governing an association to be known as the Tennessee State Bar, composed of the attorneys at law of this State, to act as an administrative agency of the Supreme Court of Tennessee, for the purpose of investigating and reporting the violation of such rules and regulations as are adopted by the Supreme Court under this Act to court of competent jurisdiction for such proceedings as may be necessary, and requiring all persons practicing law in this State to be members thereof in good standing;

(e) Fixing a schedule of fees to be paid for the purpose of administering this Act, and rules and regulations to be prescribed, adopted and promulgated hereunder for the collection and disbursement of such fees, provided, that the annual fees shall not exceed the sum of two ($2) dollars.

Sec. 2. Be it further enacted, That when and as the rules of Court herein authorized shall be prescribed, adopted and promulgated, all laws or parts of laws in conflict therewith shall be and become of no further force and effect to the extent of such conflict.

Sec. 3. Be it further enacted, That if any section, subdivision, sentence or clause of this Act shall be held invalid or unconstitutional, such fact shall not affect or impair the validity of the remaining portions of this Act.

Sec. 4. Be it further enacted, That this Act take effect from and after its passage, the public welfare requiring it."

U. A. L.

London Letter

Bar Examinations to be Held Abroad

REFERENCE was made, in the London Letter of December 1939, to arrangements for the cancellation of dining terms in the Inns of Court, and it has now become necessary, as a war measure only, to make provision for examinations to be held abroad. It is announced by the Council of Legal Education that the Michaelmas Examination, 1940, will be held in India, Australia and South Africa, concurrently with the Examination in London. The decision has been taken out of consideration for overseas students who have kept their terms but have not yet completed their examinations. This will be the first occasion upon which the English Bar examinations have been held elsewhere than in London, although the suggestion has often been made by students from overseas.

Air Raid Warnings

Another item of interest in connection with the Bar examinations is contained in a notice to the effect that if an air-raid warning is given while students are traveling to the Examination Hall, they should follow the general instruction to take cover. When the "All clear" signal has been given it is suggested that students should continue on their way to the Hall where, if there is still sufficient time, arrangements will be made for some or all of the Paper to be written, or, alternatively, a date for a postponed sitting will be arranged. One may assume that, although in the words of a popular song in this country "everything stops for tea," it is not intended that the prospect of air-raids shall stop the Bar examinations. The nearest approach to a concession in the matter is provided in a paragraph of the notice which reads "Students may like to know that if an air-raid warning is given during the Examination it is probable that the particular paper will be closed at that point and the Candidates marshalled into nearby air-raid shelters."

Foreigners and the English Bar

The following order has recently been made by the Masters of the Bench of the four Inns of Court:

"A person who is not a British subject or a subject of a native state in British India or of a territory administered under a mandate shall not be eligible for admission as a student or for call to the Bar save only for special reasons and after the passing by the Bench of the Inn concerned of a resolution to consider such proposed admission or call. The existence, in the country of which such person is a subject, of rules permitting British subjects to be called to the Bar of that country may be regarded as one of the special reasons.

With a view to securing uniformity of action in this respect, but without prejudicing the right of each Bench to admit or call in any such case, the application by an alien for admission or call at any Inn, together with the special reasons relied upon for his admission or call, shall (not less than twenty-one days before the application is referred to the Bench of the Inn) be communicated to the Treasurers of the other Inns."

Thus the Inns of Court have put an end to a privilege which has been accorded to foreigners for a very long period of time. In the Admission Registers of each of the Inns are to be found the names of nationals of nearly all the countries of the world—France, Germany, Russia, Italy, Greece, China, Japan and many others. But the greatest number (although they are hardly regarded as foreigners) have come from the United States of America to practice in the English Courts. One at least is at present in very active practice here. The Order is, of course, not retrospective, so that all aliens already members of the English Bar will so continue.

Emergency Powers (Defence) Act

This war has already been responsible for many changes in the law and provisions which, in peace time, would be regarded as drastic interference with the liberty of the subject. This, of course, was expected and accepted as a grim necessity of the times in which we live. But the most revolutionary measure ever to be placed on the statute book of this country is the Emergency Powers (Defence) Act, which was passed to extend the power already being exercised by His Majesty, in order to secure that the whole resources of the nation shall be rendered immediately available when required for purposes connected with the defence of the Realm. By this Act the King has power, by Order in Council, to make provision for requiring persons to place themselves, their services and their property at the disposal of His Majesty in any way which may appear to be necessary or expedient for securing the public safety, the maintenance of public order, or the efficient prosecution of any war in which he may be engaged, or for maintaining supplies or services essential to the life of the community.

Mr. Attlee, in moving the second reading of the Bill in the Commons, expressed the view that at this critical time the vast majority of the people would willingly give their services to the country and would do all that is asked of them. This Act gives the power to demand everything from everybody, whether workman or employer, labourer or professional man, cottager or landowner, and it is perhaps the most striking commentary on the adaptability of our race to circumstances that the Act was passed through all its stages in the House of Commons and the House of Lords, and received the Royal Assent in the short period of two hours and thirty-five minutes, and that it was received by the man-in-the-street with acclamation and a feeling of relief.

Solicitors

The Solicitors' branch of the profession is making a great effort to put its house in order, and a Bill has recently been prepared by the Council of the Law Society with the object of strengthening their hands in the matter of defalcations by solicitors and remedying the evils which result therefrom. With the Bill is issued a long explanatory memorandum in which it is stated that two of the provisions to which the greatest possible importance are attached are (1) that there shall be established a fund, to which all practising solicitors shall be required to contribute, out of which the Council may make grants of sums of money in order to compensate persons who suffer loss through defalcations by a solicitor and, (2) for the protection of such fund, that every practising solicitor shall be required to produce annually to the Registrar of Solici-

tors a certificate by a qualified accountant who has examined the solicitor's books of account and bank accounts.

The Solicitors Act of 1933 provided for the making and enforcement of rules, by the Council of the Law Society, as to the keeping of accounts for clients' moneys and other matters of professional conduct. In pursuance of that Act rules were made by the Council and came into force on the 1st January, 1935, requiring a solicitor:

"(a) To keep such books and accounts as may be necessary to distinguish (i) money received from or on account of and money paid to or on account of each of his clients, and (ii) money received and paid on his own account; and

(b) To pay into a separate account at a bank, to be called "a client account," money received on account of clients."

Although these rules went a long way towards removing the cause of many cases of defalcations, they have not made the abuse impossible and, in fact, it seems that however drastic may be the rules and however rigidly enforced, an unscrupulous solicitor may still find means to defraud his client. It is, therefore, proposed in the present Bill to establish a "compensation fund," to be maintained and administered by the Law Society, out of which grants may be made for the purpose of relieving or mitigating losses sustained by any person in consequence of dishonesty on the part of any solicitor, or any clerk or servant of any solicitor, in connection with any such solicitor's professional practice. The annual contribution payable to this fund by all solicitors is to be five pounds "or such less sum as the Council may from time to time determine," except in the case of the first three annual practising certificates, when no contribution will be required, and the second three practising certificates, when only half of the annual contribution will be payable.

There has been considerable difference of opinion in the past when the suggestion of a compulsory compensation fund has been discussed. In particular, it has been urged that it is unfair that honest solicitors should be made to pay for the dishonesty of a competitor, but the Council is now satisfied that there is a general desire that everything possible should be done to maintain the honour of the profession, and repair the damage which may be caused by the few dishonest members within their ranks. It is expected that, if other powers asked for in the Bill are given to the Law Society to enable them to exercise control of the profession, the compensation fund will, within a reasonable time, be sufficient to meet in full claims made upon it.

Perhaps the most controversial part of the Bill is clause 4, which seeks to compel every solicitor to become a member of the Law Society and subject to the Society's by-laws and regulations. For the Society it is pointed out that, although at the time of its incorporation by Royal Charter in 1845, it was intended to be a voluntary association of the leading members of the profession, it now numbers approximately 11,000 members. It is, therefore, urged that it should no longer be possible for some solicitors to enjoy much of the benefit of the Society's work without being required to contribute to the cost of it. In the profession generally there is a sharp difference of opinion on this point. Even amongst members of the Society there would seem to be nothing like unanimity, if the result of a poll recently taken may be accepted as a guide. Out of the approximate membership of 11,000 only 6,240 were sufficiently interested to vote. Of these 4,050 were in favour and 2,190 were against. There are nearly 17,000 practising solicitors in this country, including those who are members of the Law Society. It appears, therefore, that the benefits of membership have failed to tempt about a third of that number and, in the ranks of those who are already members, quite a large proportion do not feel disposed to inflict those benefits on anyone unwilling to accept or subscribe to them. It seems a pity that this proposal was embodied in the Bill as, without it, it was certain of support from all parties.

Provision is also made in the Bill for the inspection, by a qualified accountant, of a solicitor's accounts, and the Council of the Law Society will be required to make rules concerning such accounting.

Other proposals in the Bill deal with the Registrar's right to refuse a practising certificate on certain grounds; the method of dealing with clerks who have been parties to the misconduct of a solicitor; and the inspection of trust accounts where the solicitor is a trustee.

Lord Chancellor

The recent changes in the Government have brought about also a change in the highest judicial office in the country. The former Lord Chancellor, Viscount Caldecote of Bristol (formerly Sir Thomas Inskip) has been appointed Secretary of State for the Dominions and is to be leader of the House of Lords. He was called to the Bar at the Inner Temple in 1899 and to the Bench of that Inn in 1922, in which year he became Solicitor General, an office which he has occupied three times. He was Attorney General 1928-1929 and again from 1932 to 1936.

He is succeeded in office by Sir John Simon (now Viscount Simon), formerly Chancellor of the Exchequer, who was called to the Bar at the Inner Temple on the 26th January, 1899, and became a Member of the Middle Temple, *ad eundem*, on the 7th August, 1906. He was called to the Bench at the Inner Temple in 1910, two years after taking silk, and was appointed Treasurer in 1931. Viscount Simon had a very extensive practice at the Bar, and was, in addition, junior Counsel for the British Government in the Alaska Boundary Arbitration of 1903, and leading Counsel for Newfoundland in the Labrador Boundary Reference of 1926. He was Solicitor-General from 1910 to 1913, and Attorney General from 1913 to 1915. In the order of Precedence in Great Britain the Lord Chancellor takes place immediately following the Archbishop of Canterbury, and before the Archbishop of York and the Prime Minister, being seventh in order after the Sovereign.

Solicitor General

Sir William Jowitt has been appointed Solicitor General in succession to the late Sir Terence O'Connor, K.C., who died suddenly on May 8th last, at the early age of 49. Sir William, who was born in 1885 and admitted at the Middle Temple in 1906, was called to the Bar thirty-one years ago. He took silk in 1922, and was called to the Bench of his Inn on the 25th April, 1929, shortly after being appointed Attorney General and knighted. In 1931 he was sworn a member of the Privy Council.

The Temple. S.

AMERICAN BAR ASSOCIATION JOVRNAL

LAWYERS AND NATIONAL UNITY

At a time when there are many signs of an eager desire to re-create speedily in this country a National unity of spirit and effort, our people are being called on to devote themselves also to the tasks of a National political campaign, beset with issues which might easily be made more than ordinarily diverting and divisive. This is not the first time that a National election has been conducted in the throes of great emergency, even in the shadow or the reality of war; but the present crisis may, unless all care is taken, put undue strain on our democratic process and tear our people apart again in fresh and weakening antagonisms. There never was a good time to rend a Nation with rancors and resentments brewed and stirred for factional gains. Protest should be made against the raising of class, religious and racial issues in the campaign, all of which are being raised, some by one side, some by the other. There never was a worse time for such things than now.

With their training and perspective, lawyers should lead their communities, and thereby contribute to a National consensus of opinion, in behalf of a fair and high-minded discussion of the campaign issues, with the goal of aiding rather than impairing preparedness for "the common defense." We live in a world at the crossroads, in which nations are made machines for total destruction, continents are reddened with carnage, tortured men and women are driven hither and yon to seek refuge where few dare receive them, and a bedraggled humanity is torn loose from the moorings of culture, religion, law, human dignity, and all ways of life cherished for centuries. Propaganda stalks the highways and clogs the air, in the guise of truth; and the calculated creation of antagonism and suspicion between races, between religions, and even between men of accustomed good will, has become a part of the tactics of total warfare, no less than the parachutist, the flame-thrower and the tank.

Under such circumstances, the lawyers of every community, along with all its people, should be everlastingly on guard that no conscious or unconscious help be given to the sowers of dissension and distrust. No good or sufficient reason appears why National unity and preparedness cannot be advanced, rather than destroyed, through the greatest of all public forums, the enlightened debate which can and should take place before the ballots are cast in the secrecy of voting booths. This will be controlled and determined largely by American lawyers in key positions, and particularly by the two lawyers who are the leading candidates for the highest place.

In search for the National unity which will ensure a maximum of production and preparedness within time all too short, it will be well for lawyers to enjoin that the essence of unity does not mean or impose unanimity of opinion upon all matters. There is no place in America for a mechanized accord and a complacent acceptance of a prevailing view. There is abundant room in America for all those healthy and honest differences of opinion which stem from a deep-rooted belief in the integrity and wisdom of our free institutions. Independent opinion need not be suppressed or limited for the sake of being sure to curb the foes of our country. "Tolerance" is hardly the word for America, if it implies a too ostentatious willingness to "permit" some one to speak and act although we are sure he is perniciously wrong. He may be everlastingly right. An ungrudging recognition of the right of free men to differ honestly and deeply without their differences being either "tolerated" or castigated—that is the essence of an American ideal which should not be jettisoned under any plea of emergency. The vital thing is to see to it that the disruptive defeatism which has been so devastating in other lands be given no foothold here, under the guise and protection of our historic freedom.

American lawyers, expert in the assembling and weighing of facts, should help their communities to obtain, appraise and face the facts of the world's Gethsemane.

America, with its one hundred and thirty millions of people accustomed to representative government and the blessings of liberty, remains a vast bulwark of resistance to alien philosophies and aggressions, if our people are

sufficiently eager to keep it so. Three million square miles of land here contain rich resources of raw materials, and still richer resources of devotion to constitutional government, if only the moods of a superficial defeatism and cynicism can be thrown off. An alert but unreceptive public opinion can soon detect and silence the voices which sow discord and foment class warfares, and can recapture the spirit of the stirring new "Ballad for Americans" (by the youthful John Treville Latouche):

"Our country's strong, our country's young
And her greatest songs are still unsung
From her plains and mountains we have sprung
To keep faith with those who went before."

COURT RULES AND CRIMINAL PROCEDURE

The President has signed the bill, passed by both houses of Congress, which completes the restoration to the Supreme Court of the United States of another of its ancient powers, the regulation by the court of the practice and procedure in criminal actions. Power to regulate the procedure after verdict had already been restored by Congress to the Supreme Court in 1933 and has developed such manifest advantage in the administration of criminal justice in the appellate field as to warrant the enlargement of the reform to the whole field.

No controversy developed in Congress as to the desirability of extending the rule making power to the Supreme Court so that it should embrace the whole field of criminal procedure. Whatever debate there was, centered about the question whether the rules should be reported by the Court to Congress before they should go into effect. As finally passed the bill followed the form of the enabling act of June 19, 1934, which provided that the rules promulgated by the Supreme Court for the regulation of practice and procedure in civil actions should be reported to Congress by the Attorney General at the beginning of a regular session thereof and should not go into effect until after the close of that session.

The American Bar Association's Section on Criminal Law is entitled to recognition of its earnest, long continued, and successful efforts to bring about this great forward step in the administration of the criminal law. The chairmen and members of the Judiciary Committees of the Senate and House are to be commended for the attentive consideration and the intelligent and effective support given to the measure. Attorney General Jackson actively supported the reform and lent it the weight of his official and personal influence.

The passage of the bill was greatly facilitated by the success which has attended the operation of the Federal Rules of Civil Procedure. The approval which has been given by the bench and bar to those rules is due in great part to the fact that the Advisory Committee gave to the bench and bar full opportunity to participate in the rule making process. Tentative drafts were repeatedly laid before judges and practitioners. Constructive criticism and suggestions were solicited, received, and given careful consideration by the Advisory Committee. When the rules were finally promulgated by the Supreme Court they were properly considered as the joint product of the court and the profession. It would seem to go without saying that the use of the methods which proved so successful in the promulgation of the rules for civil actions, would be expected to insure in the new field, results equal to those obtained in the other procedural fields.

OPEN HOUSE AT CHICAGO HEADQUARTERS

During the Democratic Convention a great many of our members, some of them illustrious in the profession, or in public life, were in Chicago, either as Delegates or as Visitors. The JOURNAL and the ABA Headquarters held a sort of informal OPEN HOUSE during that week. We had the pleasure of visits from, and visits with, many good friends. The experience has given us a new idea: Why not hang out the OPEN HOUSE sign all the time? Visiting members will be particularly welcome.

ARTICLES IN THE JOURNAL

As it is the policy of the JOURNAL to provide, within practicable limits of space, a forum for the free expression of the views of members of the Association on matters of importance to the profession and the public, and as a wide range of opinion elicits a representative expression of the varying views, the Association and the Board of Editors of its JOURNAL assume no responsibility for the views stated in signed articles, beyond expressing by the fact of publication a judgment that the contents of the article merit consideration by our readers.

Editorially the JOURNAL supports the policies and objectives of the Association as from time to time duly determined. The views expressed are not necessarily those of each individual member of the Board of Editors.

FACTUAL ASPECTS OF OUR FOREIGN AFFAIRS

The conduct of our Foreign Relations has come, particularly during recent years, to be one of the dominating functions of our Federal Government. Likewise it has come to be a matter of very much increased public interest for the common men and women of the country. International "ideologies," international politics and international geography, have quite suddenly become the current topics of conversation in every American school and American home, however remote they may be. We are, all of us, rapidly acquiring the nomenclature of International Politics; and that is a clear gain for our country, since our Foreign Policies are better understood and remembered when expressed in slogans and short descriptive names. Notwithstanding these facts, the subject of our Foreign Relations is still one of the least understood functions of our national government, not only among the general public but also among a large part of the legal profession as well. It is not the purpose nor the place to attempt here a searching treatise on this subject. But present acute interest in these matters suggests the timeliness of a brief factual discussion, from which public thinking may start.

At the outset a number of fundamental questions may be posed for the purpose of orienting our discussion:

(1) In what Department or Departments of the Government does the Constitution lodge the power to conduct our Foreign Affairs?

(2) What are the dominant foreign policies of the United States?

(3) How many of our essential International Interests have been articulated and thereby given a nomenclature which is recognized by the people? We hear of the Monroe Doctrine, of the Freedom of the Seas, of the Open Door in China, and of the Good-Neighbor Policy. Are there others?

(4) We have become the strongest and youngest and most vigorous nation of the world. How will our future Foreign Relations be affected by the present world-wide conflict, and the "peace" which is to follow it?

(5) Will we be compelled to devise new and countervailing Foreign Policies against such ideas as "Rome-Berlin Axis," "Barter System," "Right-of-Blockade," and "Spheres of Influence"?

And finally we may ask: How many of our people, even those who claim to be intelligent and public-spirited, can discuss these questions in authentic, helpful and constructive fashion?

Of course the answers to all the above questions cannot now be given, categorically. Some of them are still on the lap of the gods. History alone can answer them. But we can be better prepared to discuss them than we now are.

Constitutional Aspects

The constitutional basis for the conduct of our foreign affairs is simple and short; and yet it is adequate and sufficient to make our Government (compared to other great nations of the world) one which operates with efficiency and permanence and coordination. Particularly is this true when we have a President who acts with force and vision. We have only to think of Washington and Jefferson and Monroe and Lincoln and Cleveland (to mention only some great leaders of the first century of our national existence) to realize that ours, happily, is a strong and effective government in Foreign Affairs.

The specific language of the Constitution granting power over Foreign Relations is found in Art. II, Sec. 2, cl. 2, and is as follows:

"The President * * * shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, * * *"

There are other less significant provisions of the Constitution which indirectly may affect our Foreign Affairs. Some of them are:

(1) "The Congress shall have power * * * to regulate commerce with foreign nations, * * *" Art. I, Sec. 8, cl. 3.

(2) "Citizens or subjects of any foreign state" may not sue the United States. Eleventh Amendment.

(3) "No State shall, without the consent of Congress, * * * enter into any agreement or compact * * * with a foreign power." Art. I, Sec. 10, cl. 3.

(4) "No person holding any office of profit or trust under (the United States) shall, without the consent of Congress, accept of any present, emolument, office or title of any kind whatever from any king, prince, or foreign state." Art. I, Sec. 9, cl. 8.

The result of these constitutional provisions is to make the Executive Department strongly dominant in the conduct of our Foreign Affairs. This, it is submitted, is as it should be. It is consistent with the theory of government, as to Foreign Relations, found in most of the great nations of the world. But more on this point later.

Some Erroneous Views

It should be stated at this point that there has been a constant struggle on the part of a minority of the Senate, almost from the beginning of our history, to enlarge its powers over Foreign Relations. Indeed, there are some members of the present Senate (following the view of individual Senators of the past) who seem to hold the mistaken view that the Senate has a co-equal power and duty with the Executive in the matter of Foreign Relations. This struggle of the Senate minority has provoked a clash between that Body and every strong President since Washington's time. But the President has consistently won out. It is right that he should have done so, as we shall see later.

There has also been expressed the erroneous view that the Senate is the only legislative branch of our government that has anything to do with Foreign Relations. We shall see later that aside from treaties, and the approval of appointments, the House of Representatives is co-equal with the Senate in all matters affecting the legislative aspects of Foreign Affairs.

These erroneous views as to the powers of the Senate are due partly to the provision quoted above requiring the "advice and consent" of the Senate for making treaties. But it is due even more to the "Prima Donna" tendencies which seem to have been traditional with certain members of the Senate in regard to International Politics, even from the earliest days. We seem always to have had (and still have) individual Senators, often from remote and minor states, who have assumed almost Olympian authority in our Foreign Affairs.

Committees of the Congress

The committees of the two houses having to do with Foreign Affairs are among the leading committees of

Congress. The Senate Foreign Relations Committee, consisting of 23 members, is headed by Chairman Key Pittman of Nevada. The House Committee of Foreign Affairs is composed of 25 members, headed by Chairman Saul Bloom of New York.

Dominance of the Executive

We have already mentioned the dominance of the President in the field of Foreign Relations. This dominance is due partly to the constitutional provision already quoted under which the President is given "power" to make treaties, and to "appoint" ambassadors, etc., with the "consent" of the Senate. It is partly due also to certain other constitutional provisions (in addition to those above mentioned) by which further powers are bestowed on the President, which indirectly affect Foreign Affairs. Thus "the executive power" of the government is specifically lodged in him; and the *conduct* of Foreign Affairs is very largely an executive function rather than a legislative one. The Constitution also provides that the President "shall receive Ambassadors," etc. It provides that "he shall take care that the laws be faithfully executed," and under the Constitution, treaties are specifically included in law of the land. But the President's dominant power in Foreign Affairs is due largely to the realistic fact that he is the Chief Executive of the nation, and is charged with and granted more power than the head of almost any other nation in the world. Most constitutional lawyers and students of government agree that this dominance of the President in Foreign Affairs has proved itself a good thing for the country. At any rate those who disagree will have to amend the Constitution to enforce their views.

Foreign Affairs—What Constitutes Them?

The Foreign Affairs of the nation may be roughly divided into four great categories:

(1) Formal Treaties which require the "advice and consent" of the Senate before they can be put into effect.

(2) Fundamental Policies like the Monroe Doctrine which are first announced by the President and then get their continued force and validity through the power of public opinion.

(3) Compacts with foreign nations (less than treaties) and Recognition of other governments, both of which are made by the President alone.

(4) The general conduct of the enormous world-wide business of the State Department. This is of two kinds, first, the "public" business of the nation, and second, business of a "private" character, that is concerning the interests and affairs of private individuals. All matters in this category are entirely in the hands of the President acting through the Secretary of State.

The realistic fact indicated by the above outline is that much the greater part of our Foreign Affairs are actually carried on outside of treaties. The last three categories have nothing to do with treaties, and are therefore entirely in the hands of the President alone. Even International Compacts are not regarded as treaties, and therefore may be made by the President without consulting either the Senate or the Congress. An important example of this was the compact made a few years ago by which this Government recognized the Soviet Union. This agreement not only gave recognition to the Russian Government, but also provided for settlement of claims by citizens of one country against the other. It was contended by some, including certain members of the Senate, that the President had exceeded his powers in not submitting the Pact to that body for approval. An important case involving the validity of that agreement, on that ground, was carried to the Supreme Court. In rejecting such contention and in holding that the Senate's jurisdiction was limited to the approval or disapproval of formal treaties, as such, the Court said:

> "In respect of what was done here [the Recognition of Russia and the making of the Compact] the Executive had authority to speak as the sole organ of the Government." (U. S. vs. Belmont 301 U. S. 324.)

That case, and particularly that sentence, are of historic importance in delimiting the powers between the President and the Senate in Foreign Affairs. It was the first case in which the Supreme Court had ever passed squarely on this point. It settled once and for all the usurpation of the Senate in such matters.

Reciprocal Trade Agreements

Recently the President and Secretary Hull have negotiated the so-called Reciprocal Trade Agreements with certain South American countries. Again it has been urged by some persons, and by some Senators, that such agreements are invalid; and that they should be approved by the Senate. It seems clear that this question has been decided the other way in the Belmont case, and that these trade pacts do not come within the category of treaties requiring approval by the Senate.

Statutes Affecting Foreign Relations

There is of course a large body of statutory law having to do with Foreign Affairs. The most important are those creating the State Department and fixing its powers and duties. It is interesting to know that the State Department, which was the first Cabinet office organized by Congress, was originally called the "Department of Foreign Affairs." It is also important to remember that by Act of Congress the Secretary of State, as the highest ranking member of the Cabinet, succeeds to the Presidency in case of the death or inability of both the President and Vice-President.

A semi-official statement defining the duties of the Department of State recites that the Secretary of State:

> "is charged under the direction of the President, with the conduct of negotiations of whatever character relating to the foreign affairs of the United States, and has charge of the correspondence with the diplomatic and consular representatives of the United States and with the representatives of foreign powers accredited to the United States. The Secretary of State grants and issues passports to nationals of the United States. Exequaturs to foreign consuls in the United States are issued through his office. He prescribes, promulgates, and administers regulations under treaties and laws governing international traffic in arms. He has custody of the seal of the United States, of current records relating to presidential electors, and of the originals of acts and resolutions of Congress subsequent to the Sixty-seventh Congress [which ended March 3, 1923], and treaties, conventions, and other international agreements of the United States subsequent to August 14, 1906, and proclamations thereof by the President. He certifies the adoption of amendments to the Constitution of the United States. He publishes the acts and resolutions of Congress, territorial papers, treaties and other international acts of the United States, and papers relating to the foreign relations of the United States."

Importance of Foreign Relations Functions

The importance of the foreign relations functions of our Government is indicated by the way Congress has organized the Department to aid the Secretary of State.

There is first an Undersecretary of State; then come three Assistant Secretaries of State; next an Assistant to the Secretary of State; and finally two special Assistants to the Secretary. There are also Divisions, Bureaus, Councillors, Advisors, Directors, Training-Units, and Special Offices to the number of 34. Besides this force in the home area, there are those persons engaged in the Foreign Service of the United States abroad, whose names and listing by posts and the incumbents thereof, occupies 20 pages in the Congressional Directory.

Marshall's View

A valued judicial interpretation of the functions of the State Department is found in the opinion of Chief Justice Marshall rendered in 1803 in the historic case of Marbury vs. Madison, 5 U. S. (1 Cranch) 137. Marshall there said:

> "By the Constitution of the United States, the President is invested with certain important political powers, in the exercise of which he is to use his own discretion, and is accountable only to his country in his political character and to his own conscience. To aid him in the performance of these duties, he is authorized to appoint certain officers, who act by his authority, and in conformity with his orders. In such cases, their acts are his acts; and whatever opinion may be entertained of the manner in which executive discretion may be used, still there exists, and can exist, no power to control that discretion. The subjects are political. They respect the nation, not individual rights, and being intrusted to the executive, the decision of the executive is conclusive. The application of this remark will be perceived by adverting to the Act of Congress for establishing the department of foreign affairs. [Title 5 U. S. C. A. Sec. 156, being R. S. Sec. 202, and derived from Act July 27, 1789, Sec. 1, 1 State 28.] This officer, as his duties were prescribed by that Act, is to conform precisely to the will of the President. He is the mere organ by whom that will is communicated. The acts of such an officer, as an officer, can never be examinable by the courts."

Historical Background

There occurred a famous episode during Washington's first administration that gave the cue to much future history, in connection with the actual conduct of our Foreign Affairs. Among other things this incident resulted in the high-sounding phrase "by and with the advice and consent of the Senate" being reduced (by political necessity) to the one element of "consent," on the part of the Senate. The story is important and worth recounting. It begins with the courteous visit of President Washington to the Senate Chamber in an effort to get the "advice" of the Senate *before* making a certain treaty. The resulting incident laid down the ship-ways for future development in such cases, and indeed fixed the traditional procedure, even down to today. The salty description of Washington's language and feelings after his futile attempt to get the "advice" of the Senate before attempting to draft the treaty, has been told by a Senator who was present in 1789, and has been retold by John Quincy Adams in his Memoirs.[1] Adams tells us that:

> "When Washington left the Senate Chamber, he said he would be 'damned' if he ever went there again. And ever since that time, treaties have been negotiated by the Executive *before* submitting them for the consideration of the Senate."

Present Day Aspects

The United States, since the great war, has been going through what may well be called its "Elizabethan Era," so far as its world position is concerned. It was during the reign of that great Queen that the people of England slowly caught the vision of the great place their nation was to take in the future history of the world. There were "Little England" people in the nation at that time who insisted that England could and should remain "isolated" from the rest of the world. But Elizabeth was not one of them. Her vision of a great world nation prevailed. The people of America in the last two decades have been going through a similar period and a similar transition. They will sooner or later come to a similar decision. It is impossible that the greatest nation in the world should do otherwise. We Americans are rapidly becoming World-Power-Minded. This process is going on in spite of the opposition of a small but articulate minority. A man does not have to be a professional prize-fighter in order to be a leading man in his community; and it is the same with great nations. We have an instance of this where England for 100 years prior to 1914 maintained her position as the dominant nation in the world without a major war.

We in America are coming to see also that *imponderable factors*, almost more than wars and arms, sometimes determine the Foreign Policies of Nations. We realize that the "Ideologies" of Nazi-ism and of Fascism and of Communism do not always depend for their force and strength upon success in battle. We know about "Fifth Column" activities, and we are subjected to a constant din of Propaganda; and these are highly imponderable things. But the two greatest imponderable things in life, whether among men or among nations, are Fear on the one hand and Courage on the other. Let us therefore, have Courage in the Right.

This discussion started out by asking some fundamental questions, and we can conclude in the same way. What, for instance, are we in America to do if Hitler destroys the British Empire? How will that affect our Foreign Relations? What will we do (aside from guns and ships) if the traditional Currency Economy of the world is destroyed and the "Barter Economy" of the Nazis is substituted in its place? What will we do if Christianity and Religion are stricken down throughout all Europe—in the countries of the forefathers of all of us? What will we do when the entire European World is Regimented and forced into particular occupations and methods of life, in accordance with the Fascist and Nazi ideologies? Can we continue to compete with them economically for the trade of the world, without setting up some comparable basis of Regimentation?

History alone, as we have said, can answer these questions. Each of these questions is cogent and realistic in this year of 1940. They will be asked more and more in the near future by, and of, the American people. And they are all questions which stem out of our Foreign Relations. U. A. L.

1. See *Sketches of Debate in the First Senate of the United States*, 1789-91, by Senator William Maclay, of Pennsylvania. Edited by George W. Harris, 1880, p. 122. See also *Memoirs of John Quincy Adams*, by Charles Francis Adams, Vol. VI, p. 427, 1875.

TENTATIVE PROGRAM . . . 63rd ANNUAL MEETING OF THE AMERICAN BAR ASSOCIATION

September 9 to 13

Monday, September 9
10:00 A. M.

THE ASSEMBLY

ACADEMY OF MUSIC

The President, Presiding

Call to Order

Addresses of Welcome by Hon. Joseph P. Gaffney, Chancellor of the Philadelphia Bar Association and Hon. Robert E. Lamberton, Mayor of the City of Philadelphia

Response by Thomas B. Gay, Chairman of the House of Delegates

Annual Address of the President of the Association

Statement concerning the work of the American Law Institute by Hon. Herbert F. Goodrich, Philadelphia, Pa.

Opportunity for the offering of resolutions, pursuant to Article IV, Section 2, of the Constitution

Announcement by the Secretary as to vacancies, if any, in the offices of State Delegates and Assembly Delegates

Election of Assembly Delegates to fill vacancies

Monday, September 9
2:00 P. M.

THE HOUSE OF DELEGATES

BALL ROOM, BELLEVUE-STRATFORD HOTEL.

The President, Presiding

Roll Call

Report of the Committee on Credentials and Admissions, Morris B. Mitchell, Chairman, Minneapolis, Minnesota

Approval of the Record

Statement of the Chairman of the House of Delegates, Thomas B. Gay

Report of the Secretary, Harry S. Knight

Report of the Treasurer, John H. Voorhees

Report of the Chairman of the Budget Committee, Joseph W. Henderson

Report of the Board of Governors to the House of Delegates, Harry S. Knight, Secretary

Report of the Committee on Rules and Calendar (including proposed amendments to Constitution and By-Laws), Chauncey E. Wheeler, Chairman, Providence, Rhode Island

Election of Members of the Board of Governors, as prescribed by the Constitution, Article VIII, Section 3

Offering of Resolutions for reference to the Committee on Draft

Reports of Committees:

Admiralty and Maritime Law, Cody S. Fowler, Chairman, Tampa, Florida

Aeronautical Law, Mabel Walker Willebrandt, Chairman, Washington, D. C.

Bill of Rights, Grenville Clark, Chairman, New York City

American Citizenship, Ralph R. Quillian, Chairman, Atlanta, Georgia

Communications, Robert N. Miller, Chairman, Washington, D. C.

State Legislation, William A. Schnader, Chairman, Philadelphia, Pennsylvania

Commerce, Oscar C. Hull, Chairman, Detroit, Michigan

Judicial Salaries, Walter S. Foster, Chairman, Lansing, Michigan

Judicial Selection and Tenure, John Perry Wood, Chairman, Los Angeles, California

Bar Journal Advertising, Fred B. H. Spellman, Chairman, Alva, Oklahoma

Customs Law, Albert MacC. Barnes, Chairman, New York City

Facilities of the Law Library of Congress, Hon. Charles H. Leavy, Chairman, Spokane, Washington

Securities Laws and Regulations, John J. Burns, Chairman, Boston, Massachusetts

Wednesday, September 11
10:00 A. M.

THE ASSEMBLY

ACADEMY OF MUSIC

The President, Presiding

Nomination and election (by ballot) of four Assembly Delegates to the House of Delegates for term ending in 1942

SYMPOSIUM ON FEDERAL REGULATION OF INSURANCE

Held under Sponsorship of
Section of Insurance Law

John W. Cronin, Chairman, Presiding

Hon. Joseph C. O'Mahoney, Senator from Wyoming, Chairman, Temporary National Economic Committee

Hon. Louis H. Pink, Superintendent of Insurance of the State of New York

Hon. J. Reuben Clark, Jr., First Counsellor in the First Presidency of the Church of Jesus Christ of Latter Day Saints, Salt Lake City, Utah

Wednesday, September 11
2:00 P. M.

THE HOUSE OF DELEGATES

BALL ROOM, BELLEVUE-STRATFORD HOTEL

The Chairman, Presiding

Roll Call
Reading and approval of the Record
Unfinished Business
Reports of Committees:
- Privileged Communications, Frank J. Wideman, Chairman, Washington, D. C.
- Legal Aid Work, Harrison Tweed, Chairman, New York City
- Public Relations, Sylvester C. Smith, Jr., Chairman, Newark, New Jersey
- Administrative Law, O. R. McGuire, Chairman, Washington, D. C.
- Labor, Employment and Social Security, William L. Ransom, Chairman, New York City
- Legal Publications and Law Reporting, James E. Brenner, Chairman, Stanford University, California

Reports of Sections:
- Criminal Law, James J. Robinson, Chairman, Bloomington, Indiana
- Legal Education and Admissions to the Bar, Charles E. Dunbar, Jr., Chairman, New Orleans, Louisiana
- International and Comparative Law, William Roy Vallance, Chairman, Washington, D. C.
- Patent, Trade-Mark and Copyright Law, Delos G. Haynes, Chairman, St. Louis, Missouri

Reports of Committees:
- Jurisprudence and Law Reform, Walter P. Armstrong, Chairman, Memphis, Tennessee
- Professional Ethics and Grievances, Hon. H. W. Arant, Chairman, Columbus, Ohio
- Ways and Means, Morris B. Mitchell, Chairman, Minneapolis, Minnesota
- Cooperation Between Press, Radio and Bar, Giles J. Patterson, Chairman, Jacksonville, Florida
- Economic Condition of the Bar, John Kirkland Clark, Chairman, New York City
- Law Lists, Stanley B. Houck, Chairman, Minneapolis, Minnesota
- Printing, Publications and Indexing, William L. Ransom, Chairman, New York City

Reports of Sections:
- Mineral Law, Robert E. Hardwicke, Chairman, Fort Worth, Texas
- Public Utility Law, Richard Joyce Smith, Vice-Chairman, Southport, Connecticut

Wednesday, September 11
10:00 P. M.

BALL ROOM, BELLEVUE-STRATFORD HOTEL

Reception by the President of the Association to members and guests. Dancing. Refreshments.

Thursday, September 12
10:00 A. M.

THE ASSEMBLY

ACADEMY OF MUSIC

The President, Presiding

Presentation of Prize Award for 1940 Ross Bequest Essay to Professor Thomas Fitzgerald Green, Jr., Law School, University of Georgia, Athens, Georgia
Open Forum—Report of Resolutions Committee, Frederick H. Stinchfield, Chairman, Minneapolis, Minnesota
Report by Chairman of the House of Delegates (or the Secretary) as to matters requiring action by the Assembly
Amendments of Constitution and By-Laws

Thursday, September 12
2:00 P. M.

THE HOUSE OF DELEGATES

BALL ROOM, BELLEVUE-STRATFORD HOTEL

The Chairman, Presiding

Roll Call
Reading and Approval of the Record
Unfinished Business
Report to the House of Delegates of Resolutions adopted by the Assembly for action by the House of Delegates
Consideration of Assembly resolutions
Reports of Committees:
- Unauthorized Practice of the Law, Edwin M. Otterbourg, Chairman, New York City
- Legal Service Bureaus, Kenneth Teasdale, Chairman, St. Louis, Missouri

Reports of Sections:
- Insurance Law, John W. Cronin, Chairman, Boston, Massachusetts
- Taxation, George Maurice Morris, Chairman, Washington, D. C.
- Bar Organization Activities, Raymer F. Maguire, Chairman, Orlando, Florida
- Junior Bar Conference, Paul F. Hannah, Chairman, Washington, D. C.
- Judicial Administration, Hon. W. Calvin Chesnut, Chairman, Baltimore, Maryland
- Municipal Law, Hon. Walter Chandler, Chairman, Memphis, Tennessee

Thursday, September 12
7:30 P. M.

ANNUAL DINNER

BALL ROOM, BELLEVUE-STRATFORD HOTEL

The President, Presiding

Speakers to be announced later

Friday, September 13

9:00 A. M.

THE HOUSE OF DELEGATES

BALL ROOM, BELLEVUE-STRATFORD HOTEL

The Chairman, Presiding

Roll Call

Reading and Approval of the Record

Unfinished Business

Reports of Sections:

Commercial Law, Jacob M. Lashly, Chairman, St. Louis, Missouri

National Conference of Commissioners on Uniform State Laws, William A. Schnader, President, Philadelphia, Pennsylvania

Real Property, Probate and Trust Law, George E. Beers, Chairman, New Haven, Connecticut

Presentation of any matters which any state or local bar association or any affiliated organization of the legal profession wishes to bring before the House of Delegates

Presentation of any matters which any Section or Standing or Special Committee of the Association wishes to bring before the House of Delegates

Report of the Committee on Hearings, Hon. T. Scott Offutt, Chairman, Towson, Maryland

Report of the Committee on Draft, George H. Smith, Chairman, Salt Lake City, Utah

Report of the Board of Elections, Hon. Edward T. Fairchild, Chairman, Madison, Wisconsin

Report of Committee on Credentials and Admissions, Morris B. Mitchell, Chairman, Minneapolis, Minnesota

Unfinished Business

New Business

The President in the Chair

Statement of certification of nominations for officers, Harry S. Knight, Secretary

Election of officers

Presentation of newly elected officers and members of the Board of Governors

Friday, September 13

1:30 P. M.

THE ASSEMBLY

DURING LUNCHEON AT VALLEY FORGE

The President, Presiding

Report by the Chairman of the House of Delegates as to the action of the House upon resolutions previously adopted by the Assembly

Action by the Assembly upon any resolutions previously adopted by the Assembly but disapproved or modified by the House

Unfinished Business

New Business

Introduction of and remarks by incoming President

Adjournment

Thursday, September 12, 2 P. M.

Friday, September 13, 9:30 A. M.

INSTITUTE ON ADMINISTRATIVE LAW AND PROCEDURE

UNDER THE AUSPICES OF THE SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR

I. Some practical problems met in the trial of cases before administrative tribunals.

(a) When is the client entitled to a notice and opportunity to be heard?

1. Constitutional right to a hearing.
2. Statutory provisions for hearing.
3. Right to a hearing in cases of granting, refusing to grant or revoking licenses.
4. How may counsel act to secure a hearing to which a client is entitled but which the tribunal refuses to afford?

(b) Who must hear the case and how?

1. May the same official act as prosecutor and judge—bias?
2. How adequately must the charges or issues be formulated and presented?
3. May the tribunal employ subordinates to take testimony and to sift and analyze it? What are the obligations of the tribunal in this regard under constitutional concepts of "fair hearing"?

(c) What are acceptable materials for administrative decision in quasi-judicial proceedings?

1. Is hearsay admissible?
2. To what extent is "judicial" notice by administrative tribunals permissible?
3. To what extent may administrative tribunals make ex parte resort to staff consultations and reports?
4. How may advantage be taken of prejudicial violations of the principles of this subsection?

II. Ways, means and difficulties in connection with obtaining judicial relief from erroneous administrative orders.

(a) Available methods of relief.

(b) Choice of the correct method of securing redress.

1. Prior resort to the administrative agency is often necessary.
2. The administrative process must be completed before appeal to courts.
3. Should relief be sought in the state or the federal courts?
4. If state court relief is sought but denied, what federal court relief is available?
5. Suppose a party fails to complete his administrative remedies. Can he seek judicial relief? Estoppel.

(c) Under what circumstances of error can one expect judicial redress?

1. When the administrative error invades a constitutional right.
2. When the administrative error consists of misinterpretation of law.
3. When the administrative error consists of incorrect decision of facts.

III. Some general conclusions.

RESOLUTIONS COMMITTEE

Monday, September 9
2:00 P. M.

Formal public hearing on Resolutions offered at the first assembly session, and referred to Committee for hearing and report
Executive meetings and further public hearings will be called and announced as occasion demands.

SECTION OF BAR ORGANIZATION ACTIVITIES

Raymer F. Maguire, Chairman, Presiding

Tuesday, September 10
9:30 A. M.

FIRST SESSION

Report of Chairman
Appointment of Nominating Committee
Roll Call
Reports of Committees:
"Problems in State Bar Association Administration;" Report of Committee on State Bar Association Administration, Roy E. Willy, Sioux Falls, South Dakota, Chairman
"Building and Maintaining a Local Bar Association;" Report of Committee on Local Bar Association Administration, E. Paul Mason, Baltimore, Maryland, of the committee
"A Comparison—Bar Integration by Statute—By Rules of Court;" Report of Committee on State Bar Integration, Edmund B. Shea, Milwaukee, Wisconsin, Chairman
"A Bar Association from the Viewpoint of the Public"; Report of Committee on Public Relations, Henry B. Nathan, San Francisco, California, Chairman
"A Young Lawyer's Place in Bar Association Activities;" Report of Committee on Junior Bar Activities in State and Local Bar Associations, John H. Anderson, Raleigh, North Carolina, Chairman
"A Salesman for the American Bar Association;" Report of Committee on Program, William Doll, Milwaukee, Wisconsin, Chairman

2:00 P. M.

SECOND SESSION

"The Organized Bar in the Current Emergency," Burt J. Thompson, Forest City, Iowa, Chairman, Sub-Committee on Organization and Development of Section of Legal Education and Admissions to the Bar
"The Public Information Program sponsored by the Junior Bar Conference as a Vital Force in Bar Affairs," Paul F. Hannah, Washington, D. C., Chairman, Junior Bar Conference.
"Trials by Newspapers as Affecting Trials by Courts," speaker to be announced later.
"The Viewpoint of the Publishers," speaker to be announced later
"The Viewpoint of the Citizen," speaker to be announced later
"The Viewpoint of the Courts and the Lawyer," Giles J. Patterson, Jacksonville, Florida
Round-Table Discussion
Election of Officers
Unfinished Business

SECTION OF COMMERCIAL LAW

Jacob M. Lashly, Chairman, Presiding

Tuesday, September 10
9:30 A. M.

FIRST SESSION

Approval of minutes of last meeting
Résumé of accomplishments and business of the current year
Report on Mid-winter Meeting of the Council
Address by the Chairman
Appointment of Nominating Committee
"Reorganizations," under leadership of John Gerdes, Chairman, and members of the Committee
Review and discussion of pending legislation on reorganization of railroads; Tax Problems in Reorganizations
Open discussion

12:30 P. M.

LUNCHEON

JOINTLY WITH MUNICIPAL LAW SECTION
Messrs. Lashly and Chandler, Presiding

Hon. Fiorello H. LaGuardia, Mayor of New York City, guest speaker

2:00 P. M.

SECOND SESSION

"Liquidations and Bankruptcy," presentation by Paul H. King, Chairman, and members of the Committee
Open discussion
Report of Nominating Committee
Election of Officers and Members of the Council

SECTION OF CRIMINAL LAW

Tuesday, September 10
10:00 A. M.

FIRST SESSION

James J. Robinson, Chairman, Presiding

SUBJECT OF SESSION: RACKETEERING AS A CRIMINAL LAW PROBLEM WITH SPECIAL ATTENTION TO WAR ACTIVITIES AND ELECTIONS

Address: "How the Federal Government Deals with Racketeering," by Hon. O. John Rogge, Assistant Attorney General of the United States in charge of the Criminal Division, Department of Justice, Washington, D. C.
Address: "How State and City Governments Deal with Racketeering," by Hon. Paul Lockwood, Executive Assistant to Hon. Thomas E. Dewey, District Attorney, New York City

Reports of Committees:
Federal Election Laws. Consideration of the Resolution for the Improvement of Federal Election Laws, Referred to the Section by the

House of Delegates at Midwinter Meeting, with Tentative Draft Bill. Arthur J. Freund, St. Louis, Missouri, Chairman

Police Training and Merit Systems, Judge Curtis Bok, Philadelphia, Chairman

Sentencing, Probation, Prisons and Parole, Dean Wayne L. Morse, Eugene, Oregon, Chairman

Tuesday, September 10

2:30 **P. M.**

SECOND SESSION

JOINT SESSION OF SECTION OF CRIMINAL LAW, NATIONAL CONFERENCE OF JUDICIAL COUNCILS, SECTION OF JUDICIAL ADMINISTRATION, AND JUNIOR BAR CONFERENCE

Hon. James W. McClendon, Texas, Presiding

(The program of this session appears in the program of the Section of Judicial Administration, Page 668)

The Section of Criminal Law, after the Joint Session, will consider the report of its Committee on Magistrates and Traffic Courts, George A. Bowman, Chairman, Milwaukee, Wisconsin

Wednesday, September 11

2:00 **P. M.**

THIRD SESSION

James J. Robinson, Chairman, Presiding

Introduction by Gordon E. Dean, Secretary of the Section

Message to the Section of Criminal Law from Hon. Robert H. Jackson, Attorney General of the United States

Address: "The Fifth Column as a Criminal Law Problem," by Hon. Francis Biddle, Solicitor General of the United States.

Report: "The Criminal Rules Bill Becomes Law," by Hon. Arthur T. Vanderbilt, former President of the American Bar Association, Chairman, and Hon. Alexander Holtzoff, Special Assistant to the Attorney General of the United States, Vice-Chairman, Committee on Supreme Court Rules for Criminal Procedure

Reports of Committees:

Procedure, Prosecution and Defense, Judge W. McKay Skillman, Detroit, Chairman

Education and Practice, Hon. Cornelius W. Wickersham, New York City, Chairman

Rating Standards and Statistics, Hon. Dan W. Jackson, Houston, Chairman

Report of the Chairman

Report of the Secretary

Completion of Unfinished Business

Meeting of the Council

BREAKFAST CONFERENCES. At 8:30 A. M. on Tuesday, September 10, and on Wednesday, September 11, breakfast conferences will be held by the officers, council members and chairmen of committees of the Section of Criminal Law, at the Bellevue-Stratford Hotel

---

SECTION OF INSURANCE LAW

Monday, September 9

2:00 **P. M.**

FIRST GENERAL SESSION

John W. Cronin, Chairman, Presiding

Address of welcome by Hon. Matthew H. Taggart, Insurance Commissioner of the Commonwealth of Pennsylvania

Response by Chairman, John W. Cronin, Boston, Massachusetts

Report of Secretary, Clement F. Robinson, Portland, Maine

Appointment of nominating committee

Reports of Committees:

Membership

Aviation Insurance Law

Lay Insurance Adjusters

Publications

Conference with National Association of Insurance Commissioners

Unauthorized Insurance Companies

Fraternal Insurance Law

Address: "An Insurance Man's View of Insurance," by Benjamin Rush, Chairman of the Board, Insurance Company of North America, Philadelphia, Pennsylvania

Address: "A Banker's View of Insurance," by Frederick A. Carroll, Vice-President, National Shawmut Bank of Boston, Boston, Mass.

Tuesday, September 10

ROUND TABLES

First period 9:30 A. M. to 11:00 A. M.

ROUND TABLE I

AUTOMOBILE INSURANCE LAW

Royce G. Rowe, Chicago, Illinois, Presiding

"Actions Against the Company Under the Policy," by Arthur F. Bickford, Boston, Massachusetts

"Introduction of Evidence of Insurance Coverage in Personal Injury Actions," by T. Harry Rowland, Camden, New Jersey

ROUND TABLE II

LIFE INSURANCE LAW

Ralph H. Kastner, Chicago, Illinois, Presiding

"Taxation of Insurance Proceeds—What the Insured and Beneficiary Face":

(a) "Federal Estate Taxes," by Price H. Topping, New York City

(b) "State Inheritance and Estate Taxes," by Milton Elrod, Indianapolis, Indiana

(c) "Federal and State Income Taxes," by Paul Myers, Washington, D. C.

ROUND TABLE III

WORKMEN'S COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE LAW

Thomas N. Bartlett, Baltimore, Maryland, Presiding

"The Rule as to Presumptions and Inferences in Compensation Cases," by Walter L. Clark, Baltimore, Maryland

Discussion leader, Alvin R. Christovich, New Orleans, Louisiana.

"Border-Line Injuries Under Compensation Laws," by George H. Detweiler, Philadelphia, Pennsylvania

Discussion leader, Clarence W. Heyl, Peoria, Ill.

Second period 11:00 A. M. to 12:30 P. M.

ROUND TABLE IV

HEALTH AND ACCIDENT INSURANCE LAW

V. J. Skutt, Omaha, Nebraska, Presiding

"Modifications by Statute of the Law of Breach of Warranty, Concealment and Representation," by Jewel Alexander, San Francisco, California

"Traumatic Neurosis as a Disability under an Accident Policy," by Mark E. Archer, Indianapolis, Indiana

ROUND TABLE V

MARINE AND INLAND MARINE INSURANCE LAW

Robert E. Hall, Hartford, Connecticut, Presiding

"The Impact of the War upon Marine Insurance Law," by James W. Ryan, New York City

"War Risk Insurance," by Samuel D. McComb, New York City

Third Period 2:00 P. M. to 3:30 P. M.

ROUND TABLE VI

QUALIFICATION AND REGULATION OF INSURANCE COMPANIES

Edwin W. Patterson, New York City, Presiding

"State Supervision of the Insurance Business," by Hon. Ernest Palmer, Director of Insurance, State of Illinois (45 minutes)

"Proposed Act on Conflict of Laws in Relation to Insurance Contracts." Seminar on the need for, and the wording of, such a statute.

(For the text of the proposed act, see 1940 Report of Committee on Qualification and Regulation of Insurance Companies, or 1939 Report of same Committee, in Committee Reports, pp. 50-52.)

Introduction by the Chairman (10 minutes)

Life, accident and health insurance and annuity contracts in relation to the statute (15 minutes)

Fire and marine insurance (including inland marine) in relation to the statute (10 minutes)

Casualty insurance in relation to the statute (15 minutes)

Fidelity and surety contracts in relation to the statute (10 minutes)

General discussion from the floor

QUESTIONS TO BE DISCUSSED:

1. Is an act of this sort, designed to clarify and make uniform the law relating to the validity and construction of insurance contracts, needed sufficiently to justify the continuation of efforts to draft it in final form and procure its adoption in the several states as a uniform act?

2. Is the location-of-risk rule, stated in subsection one, preferable to the place-of-delivery-or-issuance rule, which, as stated in subsection two, is to be superseded by the location-of-risk rule, as between states adopting the uniform act, in dealing with the types of contracts specified in paragraphs (a) to (e) of subsection one?

3. Are there situations, arising in connection with any of the types of insurance contracts specified in paragraphs (a) to (e) of subsection one, in which some other rule than the location-of-risk rule would be more convenient and just? If so, what are these situations, and why should a different rule be preferable?

4. Is it best to apply to group insurance contracts or other multiple-risk contracts (e. g. motor vehicle fleets) covering risks located in different states, the rule of subsection two (place-of-delivery-or-issuance) or some other rule?

5. If the general principle of the act is good, are there any changes in wording which would improve it?

6. Should the whole question be left to the courts to work out in each case, subject to such statutory provisions as now apply to insurance contracts "issued" or "delivered" in the state?

(On the background of the act, see addresses before the Section of Insurance Law by Messrs. Carnahan, Patterson and Pierson, as printed in Report of Proceedings of the Insurance Section, 1937, pp. 58 to 64, and in Insurance Counsel Journal, Vol. V, No. 1 (January, 1938) pp. 22-37; also Restatement, Conflict of Laws (1934) sec. 317-319 (as to insurance contracts) and sec. 332 (general rule). The proposed Act was printed, and commented upon, in the Program and Committee Reports, Section of Insurance Law, 1939, at pp. 39-42, 50-52).

ROUND TABLE VII

FIDELITY & SURETY INSURANCE LAW

Henry W. Nichols, New York City, Presiding

"Various Aspects of a Surety's Right of Indemnity," by Clare M. Vrooman, Cleveland, Ohio

"Right of Exoneration," by E. Kemp Cathcart, Baltimore, Maryland

"Termination of the Surety's Liability," by George M. Weichelt, Chicago, Illinois

Fourth Period 3:30 P. M. to 5:00 P. M.

ROUND TABLE VIII

INSURANCE LAW PRACTICE AND PROCEDURE

Eugene Quay, Chicago, Illinois, Presiding

"New Federal Rules Relating to Discovery and Examination Before Trial as Affecting 'Insurers,'" by Frank F. Nesbit, Washington, D. C.

Report on Federal District Court Rules relating to pre-trial practice, and a comparison of such as

are substantially new with the previous federal and existing state court practice

ROUND TABLE IX

CASUALTY INSURANCE LAW

Hugh D. Combs, Baltimore, Maryland, Presiding

"The Liability of a Contractor," by Joseph G. Shapiro, Bridgeport, Connecticut

"The Liability in Tort of Theatres, Parks, and Other Public Places," by Robert D. Bartlett, Baltimore, Maryland

"What is Cooperation of an Insured Under a Casualty Insurance Policy," by Theodore L. Locke, Indianapolis, Indiana

ROUND TABLE X

FIRE INSURANCE LAW

Thomas Watters, Jr., Washington, D. C., Presiding

"Loss Adjustments Under Non-Waiver Agreements," by William H. Watkins, Jackson, Mississippi

"Legal Interpretations Involved in Co-Insurance Clauses," by Horace Michener Schell, Philadelphia, Pennsylvania

Review of Fire Insurance Decisions of the Year by Samuel Levin, Chicago, Illinois

Tuesday, September 10,
7:00 P. M.

ANNUAL DINNER

Hon. Felix Hebert, Providence, Rhode Island, Master of Ceremonies

Floor show and music for dancing

No speeches

Wednesday, September 11,
2:00 P. M.

SECOND GENERAL SESSION

John W. Cronin, Chairman, Presiding

Reports of Committees, including statement on Round Table meetings:

Automobile Insurance Law
Casualty Insurance Law
Fidelity and Surety Insurance Law
Fire Insurance Law
Health and Accident Insurance Law
Life Insurance Law
Marine and Inland Marine Insurance Law
Qualification and Regulation of Insurance Companies
Workmen's Compensation and Employers' Liability Insurance Law
Insurance Law Practice and Procedure

Address, "Misconduct of Counsel in Insurance Cases," by Earl F. Morris, Columbus, Ohio

General discussion by members of Section on any appropriate subject. (Remarks limited to five minutes, except by unanimous consent).

Report of Nominating Committee
Election of Officers
Adjournment

SECTION OF INTERNATIONAL AND COMPARATIVE LAW

Monday, September 9,
2:00 P. M.

FIRST SESSION

Hon. John W. Kephart, former Chief Justice, Supreme Court of Pennsylvania, Presiding

"War in the Waters of the Western World," by Professor William E. Masterson, Professor of Law, Temple University School of Law, Philadelphia.

Discussion of Prof. Masterson's paper, led by Mr. Edwin Ford, Jr., New York City

"Air Law versus Sea Law," by Howard S. LeRoy, Professor of Law, National University, Washington, D. C.

Reports of Committees:

Territorial Limits of Jurisdiction, Hon. Carroll L. Beedy, Chairman, Washington, D. C.

Rights and Obligations of Neutral States, Mr. William S. Culbertson, Chairman, Washington, D. C.

Treaties and Agreements, Mr. Lawrence D. Egbert, Chairman, Washington, D. C.

International Commercial Law, Prof. Philip Warren Thayer, Chairman, Cambridge, Mass.

Membership, Mr. John P. Bullington, Chairman, Houston, Texas

Comparative Law Relating to the Juridical Status of Women, Miss Catherine L. Vaux, Chairman, Washington, D. C.

Latin-American Law, Col. William C. Rigby, Chairman, Washington, D. C.

Simplification and Uniformity of Laws Governing Powers of Attorney Among Countries of the Pan American Union, Mr. David E. Grant, Chairman, New York City

Development of International Law Through International Conferences, Dr. James Brown Scott, Chairman, Washington, D. C.

Tuesday, September 10,
10:00 A. M.

SECOND SESSION

William Roy Vallance, Chairman, Presiding

Reports of Committees:

Teaching of International and Comparative Law, Mr. James Oliver Murdock, Chairman, Washington, D. C.
Discussion of report

Law Relating to Protection of American Citizens and Their Property in Foreign Countries and on the High Seas, Mr. James W. Ryan, Chairman, New York City

International and Comparative Law Aspects of Aeronautics and Telecommunication, Mr. Howard S. LeRoy, Chairman, Washington, D. C.

Publications, Mr. Louis G. Caldwell, Chairman, Washington, D. C.

Comparative Housing Laws, Mr. H. Milton Colvin, Chairman, Washington, D. C.

Military and Naval Law, Col. Hugh C. Smith, Chairman, Washington, D. C.

Proposed Treaty Concerning Great Lakes-St. Lawrence Deep Waterway Project, Mr. Ralph G. Cornell, Chairman, Silver Spring, Maryland

2:00 P. M.

THIRD SESSION

William Roy Vallance, Chairman, Presiding

"Enforcement of International Law in the Courts of Pennsylvania," by the Honorable John W. Kephart, former Chief Justice of the Supreme Court of Pennsylvania

Discussion of above paper. Speakers to be announced later

Reports of Committees:

International Law in the Courts of the United States, Mr. Edgar Turlington, Chairman, Washington, D. C.

International Double Taxation, Mr. Mitchell B. Carroll, Chairman, New York City

International Judicial Assistance, Mr. Guerra Everett, Chairman, Washington, D. C.

Comparative Land Laws, Col. Harold Lee, Chairman, Washington, D. C.

International Whaling Convention, Mr. Willard B. Cowles, Chairman, Washington, D. C.

Pacific Settlement of International Disputes, Mr. William C. Dennis, Chairman, Richmond, Indiana

Restatement of International Law, Mr. William S. Culbertson, Chairman, Washington, D. C.

Revision and Codification of United States Nationality and Immigration Laws, Mr. F. Regis Noel, Chairman, Washington, D. C.

Report of Nominating Committee and Election of Officers

SECTION OF JUDICIAL ADMINISTRATION

Tuesday, September 10.
10:00 A. M.

FIRST SESSION

Hon. W. Calvin Chesnut, Baltimore, Maryland, Presiding

Report of Chairman as to current work of the Section

Reports by Mr. Paul F. Hannah, Chairman of the Junior Bar Conference and Mr. Paul B. De Witt of Ann Arbor, Michigan, as to progress of the factual survey of the existing state law and practice relating to the Section recommendations adopted in 1938.

Address, "Pre-Trial Procedure," by Mr. Justice Bolitha J. Laws, Washington, D. C.

Panel discussion by Hon. Armistead M. Dobie, United States District Judge of the Fourth Circuit, Mr. Albert E. Jenner, Jr., of Chicago, and others.

Addresses by Hon. Dean Acheson, Chairman of the Attorney General's Committee on Administrative Procedure, on "The Work of the Attorney General's Committee on Administrative Procedure"; and by Hon. Robert N. Benjamin, Governor's Commissioner on Quasi-Judicial Action of Administrative Agencies of New York, on "Survey of State Administrative Agencies."

Consideration of suggested amendments of the By-laws of the Section

1:00 P. M.

LUNCHEON

Addresses on topics of interest to the judiciary by well-known speakers, to be announced later

2:30 P. M.

SECOND SESSION

Joint Meeting with

NATIONAL CONFERENCE OF JUDICIAL COUNCILS
SECTION OF CRIMINAL LAW, AND
JUNIOR BAR CONFERENCE

Hon. James W. McClendon, Texas, Presiding

Report of Roscoe Pound, Director of the National Conference of Judicial Councils, on the work of the Conference during the past year.

Presentation and discussion of report on traffic courts, including Justices of the Peace, prepared by the National Conference of Judicial Councils in collaboration with the National Committee on Traffic Law Enforcement and the Automotive Safety Foundation:

1. Introduction by Arthur T. Vanderbilt, Chairman of the National Committee on Traffic Law Enforcement and Chairman of the Executive Committee of the National Conference of Judicial Councils.
2. Traffic Court System by Hon. Harry H. Porter, Judge of the Municipal Court of Evanston, Illinois, and Chairman of the Committee on Traffic Judges and Prosecutors of the National Safety Council.
3. Traffic Court Procedure by James J. Robinson, Chairman of the Section of Criminal Law.
4. Traffic Court Administration by Howard D. Brown, former Chairman of the Section of Insurance Law.
5. Status and Personnel of the Justice of the Peace Courts by Professor Edson R. Sunderland, Secretary of the Judicial Council of Michigan and member of the Executive Committee of the National Conference of Judicial Councils.
6. Administration of the Justice of the Peace Courts by Ronald J. Foulis, former Chairman of the Junior Bar Conference and Chairman of the Junior Bar Conference's Committee for the Study of Justice of Peace Courts.

Discussion from the floor and action on recommendations set forth in the report on traffic courts.

Report of Nominating Committee and election of officers of National Conference of Judicial Councils.

JUNIOR BAR CONFERENCE

Sunday, September 8

9:30 A. M.

Meeting of Officers and Council

12:15 P. M.

LUNCHEON
UNIVERSITY CLUB
(Tickets to be procured at the door)

2:00 P. M.

FIRST GENERAL SESSION

A. Pratt Kesler, Salt Lake City, Utah, Vice-Chairman, Presiding

"America the Beautiful"

Invocation

Address of Welcome, Thomas E. Frame, Jr., Chairman Junior Section, Philadelphia Bar Association, Philadelphia, Pa.

Response, Ronald J. Foulis, former Chairman of the Conference.

Address (Speaker to be announced later)

Annual Report of National Chairman, Paul F. Hannah, Washington, D. C.

Annual Report of National Secretary, Joseph Harrison, Newark, N. J.

Report of Rules Committee, Henry Bane, Chairman, Durham, N. C.

Symposium: "The Young Lawyers' Part in National Security"
(Discussion leaders to be announced later)

Formulation of program for 1940-1941*

1. Reports** and recommendations of Committees:

Report of Economic Condition of the Bar, Mark H. Harrington, Denver, Colorado, Chairman

Report of Committee in Aid of the Small Litigant, Ronald J. Foulis, St. Louis, Missouri, Chairman

Report of Committee in Cooperation with Junior Bar Groups, Philip H. Lewis, Topeka, Kansas, Chairman

Report of Legal Services Committee, Joseph J. Wolf, San Francisco, California, Chairman

Report of Committee on Legislative Drafting, Charles E. Caspari, Jr., St. Louis, Missouri, Chairman

Report of Membership Committee, Willett N. Gorham, Chicago, Illinois, Chairman

Report on Procedural Reform Studies, Paul B. DeWitt, Ann Arbor, Michigan, Director in Charge

Report on Public Information Program, L. Stanley Ford, Hackensack, New Jersey, National Director

Report of Committee on Relations with Law Students, Frank F. Eckdall, Emporia, Kansas, Chairman

Report of Committee on Restatement of the Law, Mildred G. Bryan, Washington, D. C., Chairman

Report of Activities Committee, Lewis F. Powell, Jr., Richmond, Virginia, Chairman

2. Council Recommendations

Announcement of personnel of Nominating Committee

Report of Committee on Elections, R. Granville Burke, New York, N. Y., Chairman

Monday, September 9

8:00 A. M.

Breakfast by Council Members for the State Chairmen

2:00 P. M.

Open hearings by Resolutions Committee

4:00 P. M.

Meeting of Nominating Committee to receive nominations.

Tuesday, September 10

9:45 A. M.

SECOND GENERAL SESSION

Paul F. Hannah, Chairman, Presiding

Address by Hon. Francis Biddle, the Solicitor General of the United States

Report of Bill of Rights Committee, Ralph E. Langdell, Manchester, N. H., Chairman

Completion of unfinished Sunday program

Other unfinished business

New business

Proposed amendments to By-Laws of the Conference, presented by James Arthur Gleason, Chairman, Harold E. Schweitzer and A. Pratt Kesler, sub-committee of Executive Council on By-Law Revision

Other new business

Report of Nominating Committee

Nominations from the floor

12:00 to 2:00 P. M.

Balloting by members for election of officers and Council Members for the ensuing year

2:00 P. M.

Meeting of Election Committee to count ballots

2:30 P. M.

JOINT MEETING WITH NATIONAL CONFERENCE OF JUDICIAL COUNCILS, SECTION OF JUDICIAL ADMINISTRATION AND SECTION OF CRIMINAL LAW

Hon. James W. McClendon, Texas, Presiding

(The program of this session appears in the program of the Section of Judicial Administration, Page 668)

*Completion of this part of the program on Sunday afternoon seems unlikely, and at 4:45 P. M. it will be continued to Tuesday morning, to make way for the announcements of the personnal of the Nominating Committee and the Elections Committee report.

**No reports printed in the Advance Program (which will be in the hands of members about August 15th) will be read.

7:00 P. M.

Introduction of New Officers and Council at Dinner-Dance

ENTERTAINMENT PROGRAM

Sunday, September 8

Reception, 5:30 P. M. to 8:00 P. M.—Tendered by the Junior Members of the Philadelphia Bar Association—Philadelphia Country Club

Tuesday, September 10

Dinner Dance and Cruise—7:00 P. M.—SS Mt. Vernon

The above events are open to members of the Conference, young lawyers and their ladies

---

SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR

Charles E. Dunbar, Chairman, Presiding

Tuesday, September 10
2:00 P. M.

Address and report of Chairman, Charles E. Dunbar, New Orleans, Louisiana
Appointment of Nominating Committee
Address by Walter P. Armstrong, Memphis, Tennessee (subject to be announced later)
Report of Nominating Committee
Election of officers and members of council

SECTION OF MINERAL LAW

Robert E. Hardwicke, Chairman, Presiding

Tuesday, September 10
10:00 A. M. and 2:00 P. M.

Report of Chairman
Reading of minutes and disposition of routine matters
Appointment of Nominating Committee
Reports of Committees
Addresses by Walter L. Summers, author of *Summers' Oil and Gas*, and Roy W. Johns, General Counsel of Atlantic Refining Company, on problems relating to the oil and gas industries
Addresses by W. A. Richards, President of Sovereign Pocahontas Company, and Thomas J. Mitchie, Pittsburgh, Pennsylvania, on problems relating to the coal industry.
New Business
Report of Nominating Committee
Election of Officers

SECTION OF MUNICIPAL LAW

Hon. Walter Chandler, Chairman, Presiding

Tuesday, September 10.
9:30 A. M.

FIRST SESSION

Greetings by Hon. Robert E. Lamberton, Mayor of Philadelphia.
Chairman's Address: Hon. Walter Chandler, Mayor of Memphis, Tennessee
"Federal municipal relationships; the legal effect of federal grants-in-aid on local self-government," by Arthur A. Ballantine, New York City, former Under-Secretary of the U. S. Treasury, and Louis Brownlow, Chicago, Director of the Public Administration Clearing House, and Chairman of the President's Committee on Administrative Management.

General Discussion to follow.

"Annexation by judicial proceeding of territory adjoining a city," by Horace Edwards, City Attorney of Richmond, Virginia.
Committee reports.

12:30 P. M.

LUNCHEON

JOINTLY WITH THE COMMERCIAL LAW SECTION

Messrs. Chandler and Lashly presiding.

Hon. Fiorello H. LaGuardia, Mayor of New York City, guest speaker.

2:30 P. M.

SECOND SESSION

"The interstate commerce clause and local municipal taxes," by William C. Chanler, Corporation Counsel of New York City.
"Administrative codes and codification of municipal ordinances," by Barnet Hodes, Corporation Counsel of Chicago.
"Selection of municipal law officers by competitive examination," by Murray Seasongood, Cincinnati, and Henry Parkman, Jr., former Corporation Counsel, City of Boston

General Discussion.

Committee reports.
Election of Officers.

SECTION OF PATENT, TRADE-MARK AND COPYRIGHT LAW

Delos G. Haynes, Chairman, Presiding

Monday, September 9
1:00 P. M.

FIRST SESSION

Announcements by Hospitality Committee, Charles H. Howson, Chairman
Discussion of Committee Reports*:
British-Type Commission, Richard Spencer, Chairman, Chicago, Illinois
Copyrights, Edward A. Sargoy, Chairman, New York City
Ethics and Grievances, Merrell E. Clark, Chairman, New York City
Federal and State Trade-Mark Legislation, John A. Dienner, Chairman, Chicago, Illinois

*These reports will appear in The Program and Reports of the Section of Patent, Trade-Mark and Copyright Law, to be distributed to members of the Section.

Government Preview of Patent Contracts, John F. Robb, Chairman, Cleveland, Ohio
International Cooperation, Edward S. Rogers, Chairman, Chicago, Illinois
Legislation, Jennings Bailey, Jr., Chairman, Washington, D. C.
Membership, Elwin A. Andrus, Chairman, Milwaukee, Wisconsin
Patent Law Revision, Frank Parker Davis, Chairman, Chicago, Illinois
Advertising by Patent Attorneys (Special Committee), Jo Baily Brown, Chairman, Pittsburgh, Pennsylvania
Designs, Henry W. Carter, Chairman, Toledo, Ohio
Relation of Patents to Employment, George H. Willits, Chairman, Detroit, Michigan

Tuesday, September 10
9:00 A. M.

SECOND SESSION

Discussion of Committee Reports, continued

12:30 P. M.

LUNCHEON

(Under the auspices of the International Association for Protection of Industrial Property)
(See program, page 673)

2:00 P. M.

THIRD SESSION

Discussion of Committee Reports
Unfinished Business
Election of Officers

5:00 P. M.

COUNCIL MEETING

Brief meeting of newly elected Section Council

7:00 P. M.

ANNUAL DINNER

Aronimink Golf Club, Newton Square

Transportation will be provided by members of the Philadelphia Patent Law Association, cooperating with the Section's Hospitality Committee

SECTION OF PUBLIC UTILITY LAW

Monday, September 9
2:00 P. M.

FIRST SESSION

Richard J. Smith, Vice Chairman and Acting Chairman, Presiding

Address of Welcome, by Hon. John Siggins, Jr., Chairman of Public Utility Commission of the State of Pennsylvania
Address of Acting Chairman
Address: (Speaker and subject to be announced later)
Report of Standing Committee as to Developments during the year in the Field of Public Utility Law, Stoddard M. Stevens, Jr., Chairman, New York City
Informal Discussion of Report

Tuesday, September 10
9:30 A. M.

SECOND SESSION

Report of Committee on Recent Developments in the Field of Public Utility Valuation and Accounting, Freeman T. Eagleson, Chairman, Columbus, Ohio
Address: "The Public Utility Holding Company Act of 1935," by Hon. Robert E. Healy, Securities and Exchange Commission, Washington, D. C.
Report of Committee on Integration under the Public Utility Holding Company Act, Hon. John J. Burns, Chairman, Boston, Mass.
Report of Committee on Redistribution of Authority in Utility Regulation between State and Federal Governments, Hon. Frank E. Atwood, Chairman, Jefferson City, Mo.
Informal Discussion of Reports

Tuesday, September 10
2:00 P. M.

THIRD SESSION

Address, "Regulatory Powers of Commissions," Hon. Harry Bacharach, President, National Association of Railroad and Utility Commissioners, Atlantic City, N. J.
Address, "The Problems Arising out of the Regulation of Competing Agencies of Transportation" by Hon. Joseph B. Eastman, Chairman, Interstate Commerce Commission, Washington, D. C.
Symposium
Discussion to be led by representatives of various agencies of transportation
Report of Nominating Committee and the Election of Officers

7:30 P. M.

DINNER DANCE

PHILADELPHIA COUNTRY CLUB

For members, their ladies, and guests.

SECTION OF REAL PROPERTY, PROBATE AND TRUST LAW

Monday, September 9
12:00 M.

Annual Luncheon Meeting of Council of Section

Monday, September 9
2:00 P. M.

FIRST GENERAL SESSION

George E. Beers, Chairman, Presiding

Introductory Statement by Chairman
Welcome
Announcements
Statements by Directors of Divisions:
Real Property Law Division, Robert F. Bingham, Cleveland, Ohio, Vice-Chairman
Probate Law Division, Fred T. Hanson, McCook, Nebraska, Vice-Chairman

Trust Law Division, Gilbert T. Stephenson, Wilmington, Del., Vice-Chairman

Report of Secretary of Section, James E. Rhodes 2d, Hartford, Conn.

Report of Joint Committee on State and Federal Taxation, H. Herbert Romanoff, New York, N. Y., Chairman

Report of Committee on Cooperation of State and Local Bar Associations, William F. Bruell, Redfield, S. Dak., Chairman

Report of Committee on New Members for American Bar Association and Section, Carroll G. Patton, Minneapolis, Minn., Chairman

Appointment of Nominating Committee

"Going Businesses as Investments for Trust Funds," Clarence D. Cowdery, Vice-President, The Boatmen's National Bank, St. Louis, Mo.

"Investments Received from Creators of Trusts," Harrison Tweed, New York, N. Y.

Address by Hon. Francis Biddle, Solicitor General of the United States.

Tuesday, September 10
9:30 A. M.

REAL PROPERTY LAW DIVISION

Robert F. Bingham, Cleveland, Ohio, Vice-Chairman and Director of Division, Presiding

Statement by Director of Division

Committee Reports and Discussions:

Changes in Substantive Real Property Principles, Henry Upson Sims, Birmingham, Ala., Chairman

Real Property Financing, Henry P. Thomas, Alexandria, Va., Chairman

Standards, Charles Martin Lyman, Hamden, Conn., Chairman

Conveyances and Records, Margaret McGurnaghan, Topeka, Kans., Chairman

Joint Committee with American Society of Civil Engineers, Dorr Viele, Cambridge, Mass., Chairman

SYMPOSIUM: Under the auspices of the Committee on Changes in Substantive Real Property Principles, Henry Upson Sims, Birmingham, Ala., Chairman

Subject: "Should Inchoate Dower and Curtesy Initiate be Abolished?"

General Discussion from the floor. Mimeographed outline will be distributed at an earlier meeting of the division

Tuesday, September 10
9:30 A. M.

PROBATE LAW DIVISION

Fred T. Hanson, McCook, Nebr., Vice-Chairman and Director of Division, Presiding

Statement by Director of Division

Reports of Division Committees:

Conflicts of Probate Jurisdiction and Practice, William L. Eagleton, Peoria, Ill., Chairman

Guardianship Administration, William M. Winans, Brooklyn, N. Y., Chairman

Address, "Progress and Legislation Concerning Personal Suretyship for Guardians," Henry W. Nichols, New York, N. Y.

Discussion

"Proposal for Model Probate Code."

Discussion, led by R. G. Patton, Minneapolis, Minn.

Address, "The Double Taxation of the Intangibles of Decedents," Joseph F. McCloy, New York, N. Y.

Tuesday, September 10
9:30 A. M.

TRUST LAW DIVISION

Gilbert T. Stephenson, Wilmington, Del., Vice-Chairman and Director of Division, Presiding

Statement by Director of Division

Report of Committee on Current Trust Literature, Herbert H. Scheier, Chicago, Ill., Chairman

Report of Committee on Recent and Pending Trust Legislation, Ralph H. Spotts, Los Angeles, Calif., Chairman

Address: "Common Stocks as Investments for Trust Funds," by C. Allison Scully, Vice-President, Bank of the Manhattan Company, New York, N. Y.

Comments by Lee C. Bradley, Jr., Birmingham, Ala.

Address: "Bonds as Investments for Trust Funds," by Raymond M. Remick, Philadelphia, Pa.

Comments by J. Crossan Cooper, Jr., Baltimore, Md.

Tuesday, September 10
2:00 P. M.

JOINT MEETING OF REAL PROPERTY AND TRUST LAW DIVISIONS

Harold L. Reeve, Chicago, Illinois, Vice-Chairman of the Section, Presiding

Committee Reports:

Creation and Administration of Trusts, George W. Van Slyck, New York, N. Y., Chairman

Trust and Estate Decisions, Walter W. Land, New York, N. Y., Chairman

"Real Property as Investments for Trust Funds," by Mayo A. Shattuck, Boston, Mass.

"Mortgages as Investments for Trust Funds," by Fritz A. Nagel, Denver, Colo.

Address on the present German Agricultural System, by Dr. Karl Lowenstein

Tuesday, September 10
7:00 P. M.

ANNUAL DINNER

George E. Beers, Chairman, Presiding

For members, ladies and guests. Informal.

Address, David A. Simmons, Houston, Texas

Wednesday, September 11
2:00 P. M.

SECOND GENERAL SESSION

Nathan William MacChesney, last retiring chairman of the Section, Presiding

Report of Division Meetings for Action
- Real Property Law Division, Robert F. Bingham, Director
- Probate Law Division, Fred T. Hanson, Director
- Trust Law Division, Gilbert T. Stephenson, Director

Statement by Chairman of Section as to any action desired

Address: "Two States and Real Estate," by Hon. Herbert F. Goodrich, Judge of the United States Circuit Court of Appeals for the Third Circuit

Report of Nominating Committee

Elections

Announcements

Adjournment

Wednesday, September 11
5:00 P. M.

Meeting of Council as constituted for 1940-41

NOTE: The Council will also meet by adjournment on Thursday, September 12, the hour to be determined at the Wednesday meeting.

SECTION OF TAXATION

George Maurice Morris, Chairman, Presiding

Tuesday, September 10
10:00 A. M.

MORNING SESSION

Address of Welcome, Hon. Franklin S. Edmonds, Chairman, Tax Section, Pennsylvania State Bar Association

"Problems in Federal Tax Procedure," Walter Gellhorn, Director, Attorney General's Committee on Administrative Procedure

Reports of Committees:*
- Federal Income Taxes, E. Barrett Prettyman, Chairman, Washington, D. C.
- Federal Estate and Gift Taxes, George E. Cleary, Chairman, New York City
- Federal Excise and Miscellaneous Taxes, John W. Townsend, Chairman, Washington, D. C.
- Special Committee on the "Traynor Plan," Lucius A. Buck, Chairman, New York City
- Advisory Committee to the United States Bureau of the Census, Homer Hendricks, Chairman, Washington, D. C.
- Old Age Benefit and Unemployment Insurance Taxes, Robert V. Vincent, Chairman, New York City

12:30 P. M.

LUNCHEON SESSION

"Income Tax Prosecutions and Local Law Enforcement," Assistant Attorney General Samuel O. Clark, Jr., Chief of the Tax Division, United States Department of Justice.

"Tax Thoughts of a Legislator," Hon. Robert C. Hendrickson, Presiding Officer, New Jersey State Senate

2:00 P. M.

AFTERNOON SESSION

Reports of Committees:*
- Coordination of Federal, State and Local Taxes, Hon. Henry F. Long, Boston, Mass., Chairman
- State Taxes, Hon. Oscar Leser, Baltimore, Md., Chairman
- Local Taxes, Professor Robert C. Brown, Bloomington, Ind., Chairman
- Special Committee on Recommendations of the Section of Judicial Administration, William A. Sutherland, Atlanta, Ga., Chairman
- Special Committee to Cooperate with State and Local Bar Associations, William C. Warren, Cleveland, Ohio, Chairman
- Special Committee on Tax Clinics, Percy W. Phillips, Washington, D. C., Chairman
- Special Committee on Membership, William C. Warren, Cleveland, Ohio, Chairman

Amendment of By-Laws

Report of Nominating Committee and Election of Council and Officers

Open Forum

Adjournment

COMMITTEE ON LEGAL AID WORK

Monday, September 9
1:00 P. M.

LUNCHEON

Harrison Tweed, Chairman, Presiding

Address by Dean Roscoe Pound, Cambridge, Massachusetts; followed by:

FOURTH ANNUAL OPEN MEETING OF LEGAL AID COMMITTEES OF STATE AND LOCAL BAR ASSOCIATIONS AND OTHERS INTERESTED IN LEGAL AID WORK.

CONFERENCE ON PERSONAL FINANCE LAW

Tuesday, September 10
6:30 P. M.

FOURTEENTH ANNUAL MEETING

Edmund Ruffin Beckwith, Chairman, Presiding

Topic: Adequate Legal Protection for the Small Debtor

INTERNATIONAL ASSOCIATION FOR THE PROTECTION OF INDUSTRIAL PROPERTY

(American Group)

Tuesday, September 10
12:30 P. M.

ANNUAL LUNCHEON MEETING

John A. Dienner, President, Presiding

Reports of Officers and Committees
General discussion by members
Election of Officers

*Reports of Committees shall not be read except by vote of the meeting.

THE NATIONAL CONFERENCE OF BAR EXAMINERS

Tuesday, September 10
9:30 A. M.

Stanley T. Wallbank, Chairman, Presiding

Speakers: Dean Bernard C. Gavit of the University of Indiana Law School

Mr. Wilbur F. Denius, Chairman of the Colorado Board of Bar Examiners

Hon. Herbert F. Goodrich, Dean of the University of Pennsylvania Law School and Judge of the United States Circuit Court of Appeals for the Third Circuit.

12:30 P. M.

LUNCHEON

Speaker to be announced later

Thursday, September 12
2:30 P. M.

Bar Examiners' Clinic by Pennsylvania State Board of Law Examiners, Chairman Charles H. English, presiding

---

MEETINGS OF LAW SCHOOL ALUMNI ASSOCIATIONS, LEGAL FRATERNITIES, SORORITIES AND OTHER ORGANIZATIONS

The following Law School Alumni Associations, Legal Fraternities, Sororities and other groups will hold breakfasts, luncheons and dinner meetings during the Annual Meeting of the American Bar Association in Philadelphia. Tickets may be purchased and information secured at the General Headquarters of the Association.

Columbia University Law School Alumni, Luncheon, Wednesday, September 11, Bellevue-Stratford Hotel.

Georgetown University Law School Alumni, Luncheon, Thursday, September 12, Art Club.

Harvard University Law School Alumni, Luncheon, Thursday, September 12, Bellevue-Stratford Hotel.

Kappa Beta Pi Legal Sorority (International), Luncheon, Wednesday, September 11, Ritz-Carlton Hotel. Reservations should be made with Mrs. May T. Peacock, 2112 U. S. Court House, 9th and Chestnut Sts., Philadelphia, Pennsylvania.

Phi Alpha Delta Law Fraternity, Luncheon, Wednesday, September 11, Art Club.

Phi Delta Delta Legal Fraternity, Breakfast, Wednesday, September 11, Bellevue-Stratford Hotel.

University of Pennsylvania Law School Alumni, Luncheon, Wednesday, September 11, The Union League Club.

The Texas Society, Luncheon, Tuesday, September 10, (Place to be announced later)

University of Virginia Law School Alumni, Luncheon, Wednesday, September 11, Bellevue-Stratford Hotel.

Arrangements for Annual Meeting, Philadelphia, Pennsylvania, September 9-13, 1940

Headquarters—Bellevue-Stratford Hotel

Hotel accomodations, all with bath, are available as follows:

	Single for 1 person	Double (Dbl. bed) 2 persons	Twin beds for 2 persons	Parlor suites (2 rooms for 1 or 2 pers.)
Adelphia (13th & Chestnut)	$3.50–5.00	$5.00–6.00	$6.00– 8.00	$12.00–25.00
Barclay (18th & Rittenhouse Sq. E.)			7.00–10.00	12.00–18.00
Bellevue-Stratford (Broad & Walnut)		All space reserved		
Benjamin Franklin (9th & Chestnut)	3.50–5.00	5.00–6.00	6.00– 8.00	12.00–14.00
Drake (1512 Spruce St.)	3.50	5.50	6.00	10.00
Essex (13th & Filbert)	3.00–3.50	5.00–6.00	7.00	
McAlpin (111 So. 10th St.)	2.25–2.75	4.00	4.50– 5.00	
Majestic (Broad & Girard)	2.50–3.00	4.00–5.00	5.00	8.00–12.00
Manufacturers & Bankers Club (Broad & Walnut)	(Men only) 3.00		6.00	
Philadelphian (39th & Chestnut)	3.00–4.00	5.00–5.50	6.00– 8.00	9.00–20.00
Ritz-Carlton (Broad & Walnut)		All space reserved		
St. James (13th & Walnut)	3.00		5.00– 6.00	10.00
Stephen Girard (2027 Chestnut St.)	2.75–3.25	4.50–5.50	5.50	
Sylvania (13th & Locust)	3.00–3.50		5.00– 6.00	10.00–12.00
Walton (Broad & Locust)	2.50–4.00	4.00–5.00	5.00– 6.00	8.00–12.00
Warburton (20th & Sansom)	3.00		5.00	
Warwick (17th & Locust)	5.50		8.00	12.00–14.50
Wellington (19th & Walnut)	4.00		6.00	8.00

Explanation of Type of Rooms

A single room contains either a single or double bed to be occupied by *one person.* A double room contains a double bed to be occupied by *two persons.*

A twin-bed room contains two beds to be occupied by two persons. A twin-bed room will not be assigned for occupancy by one person.

A parlor suite consists of parlor and communicating bedroom containing double or twin beds. Additional bedrooms may be had in connection with the parlor.

To avoid unnecessary correspondence, members are requested to be specific in making requests for reservation, stating hotel, *first and second choice* of, number of rooms required and rate therefor, names of persons who will occupy the same, arrival date and, if possible, definite information as to whether such arrival will be in the morning or evening.

Requests for reservations should be addressed to the Reservation Department, 1140 N. Dearborn Street, Chicago, Illinois.

PROPOSED AMENDMENTS
TO THE CONSTITUTION AND BY-LAWS OF AMERICAN BAR ASSOCIATION

To be Presented and Acted Upon at Its Sixty-third Annual Meeting at Philadelphia, September 9 to 13

TO THE MEMBERS OF THE AMERICAN BAR ASSOCIATION AND OF THE HOUSE OF DELEGATES:

I.

NOTICE IS HEREBY GIVEN that Harry P. Lawther, of Dallas, Texas, Henry Upson Sims, of Birmingham, Alabama, James F. Ailshie, of Boise, Idaho, John Carlisle Pryor, of Burlington, Iowa, George G. Bogert, of Chicago, Illinois, James C. Logue, of Cleveland, Ohio, Oliver O. Haga, of Boise, Idaho, Fred S. Hutchins, of Winston-Salem, North Carolina, William H. Arnold, of Texarkana, Arkansas, and Charles M. Lyman, of Hamden, Connecticut, all members of the Association, have filed with the Secretary of the Association the following proposed amendment to the Constitution of the Association:

Amend Article VIII of the Constitution of the American Bar Association by striking out the words "Chairman of the House of Delegates" in lines 6 and 7 of Section 1, and in line 8 of Section 2, and add to the said Article VIII the following:

"Section 2a. *Nominations for and Election of Chairman of the House of Delegates.* Nominations for Chairman of the House of Delegates shall be made from the floor at the annual meeting of the House of Delegates at which such Chairman is to be elected.

"In voting for Chairman of the House of Delegates where there is more than one candidate, the vote shall be by States; each State shall be entitled to one vote. The word "State" shall include each Territorial Group as defined in Section 4, Article V of this Constitution. In case of a division among the delegates from any one State, the vote of that State shall be divided in proportion to the number favoring one or the other candidate and as thus divided the vote of that State shall be cast."

So that Article VIII, Sections 1 and 2 and 2a, as proposed to be amended shall then read as follows:

"Article VIII

"NOMINATION OF OFFICERS AND GOVERNORS:

"Section 1. *Nominations by State Delegates*—The State Delegates from each State (and the Delegate from the Territorial Group) shall meet not later than seventy days before the opening of the annual meeting in each year, and shall make and promptly announce and publish a nomination for each of the offices of President, Secretary and Treasurer and for the members of the Board of Governors to be elected in that year. The time and place of the meeting of the State Delegates shall be fixed by the Board of Governors. Not less than twenty days' written notice of such meeting shall be sent by the Chairman of the House of Delegates to each State Delegate. The Chairman shall act as the presiding officer of all meetings of State Delegates and the Secretary of the Association shall act as Secretary of such meetings. A majority of the State Delegates present and voting at such meeting shall be entitled to make any nominations. The traveling and other necessary expenses incurred in the continental United States by State Delegates in attendance at the meeting provided for in this Section shall be paid by the Association. In the event of the death, disability or declination of a member nominated by the State Delegates, the State Delegates shall reconvene at the annual meeting and make a nomination for that office.

"Section 2. *Other Nominations*—Not earlier than seventy days, nor later than forty days before the opening of the annual meeting, one hundred members of the Association in good standing, of whom not more than fifty may be accredited to any one State, may file with the Secretary a nominating petition (which may be in parts), duly signed, making other nominations for the office of President, Secretary or Treasurer. Not earlier than seventy days nor later than forty days before the opening of the annual meeting, fifty members of the Association in good standing, of whom not more than twenty-five may be accredited to one state, may file with the Secretary a nominating petition (which may be in parts) duly signed, making other nominations for any member of the Board of Governors to be elected in that year. With any such petition shall be filed the consent of the nominee. The Secretary shall cause all nominations in whatever manner made to be published in the next issue of the AMERICAN BAR ASSOCIATION JOURNAL and shall certify such nominations to the House of Delegates. Nominations shall be made only in the manner expressly provided in this Article.

"Section 2a. *Nominations for and Election of Chairman of the House of Delegates—Nominations for Chairman of the House of Delegates shall be made from the floor at the annual meeting of the House of Delegates at which such Chairman is to be elected. In voting for Chairman of the House of Delegates where there is more than one candidate, the vote shall be by States; each State shall be entitled to one vote. The word 'State' shall include each Territorial Group as defined in Section 4, Article V, of this Constitution. In case of a division among the delegates from any one State, the vote of that State shall be divided in proportion to the number favoring one or the other candidate and as thus divided, the vote of that State shall be cast.*"

II.

NOTICE IS HEREBY GIVEN that John H. Voorhees, Treasurer of the Association, and a member of the Association from Sioux Falls, S. D., has filed with the Secretary of the Association the following proposed Amendment to the By-Laws of the Association:

Amend Article I, Section 1 of the By-Laws as follows:

Strike from said Section the sentence in lines 10 to 14 which reads as follows:

"Upon the approval of an application by a majority of the Committee on Admissions for the State in which the applicant is engaged in the practice of law or has his principal office, such applicant shall be deemed nominated for membership."

And substitute therefor the following:

"If the applicant is a member of the bar of the State in which he resides or has his principal office or is a member of a Federal, State or territorial court of record of a State in which he resides or has his principal office, the application shall be referred to the Committee on Admissions for one of those States. If, however, the applicant

is not so a member of the bar in one of those States, the application may be referred to the Committee on Admissions for one of those States or may be referred to the Committee on Admissions for a State in which the applicant formerly resided and to the bar of which or to the bar of a Federal, State or territorial court of record of which he was admitted. Upon the approval of an application by a majority of any such Committee on Admissions, such applicant shall be deemed nominated for membership."

Strike from said Section the last sentence in lines 16 and 17 thereof reading as follows:

"This Section shall become operative upon the adjournment of the 1938 annual meeting."

Article I, Section 1, as proposed to be amended shall then read as follows:

"Sec. 1. *Committees on Admissions; nomination of members.* A Committee on Admissions, of five members, shall be appointed by each State Delegate for his State, for a term of five years, and for such lesser terms as may be necessary to stagger the expiration thereof, on a basis of one expiration each year. Vacancies shall be filled by appointment for unexpired terms. Applications for membership shall be considered by such Committees only upon endorsement thereof by a member of the Association in good standing. *If the applicant is a member of the bar of the State in which he resides or has his principal office or is a member of a Federal, State or territorial court of record of a State in which he resides or has his principal office, the application shall be referred to the Committee on Admissions for one of those States. If, however, the applicant is not so a member of the bar in one of those States, the application may be referred to the Committee on Admissions for one of those States or may be referred to the Committee on Admissions for a State in which the applicant formerly resided and to the bar of which or to the bar of a Federal, State or territorial court of record of which he was admitted. Upon the approval of an application by a majority of any such Committee on Admissions, such applicant shall be deemed nominated for membership.* The President shall appoint a Committee or Committees on Admissions for the territorial group."

III.

NOTICE IS HEREBY GIVEN that Henry C. Hart, a member of the Association from Providence, R. I., has filed with the Secretary of the Association the following proposed Amendment to the By-Laws of the Association:

Amend Article II, Section 5 by (a) inserting in line 6 thereof, immediately after the comma which follows the word "Association," the following:

"or under which any of its members under the age of thirty-six (36) years become members of the American Bar Association, as well as of such State or Local Bar Association,"

and (b) inserting in line 9 thereof, immediately after the comma which follows the word "dues," the following:

"applicable to the members of both Associations or to the members of both Associations under the age of thirty-six (36) years as the case may be,"

so that Article II, Section 5, as proposed to be amended, shall then read as follows:

"Section 5. *Joint Dues*—In case any State or local Bar Association shall propose the establishment of a system of joint dues between itself and the American Bar Association, under which all of its members become members of the American Bar Association, as well as of such State or local Bar Association, *or under which any of its members under the age of thirty-six (36) years become members of the American Bar Association, as well as of such State or local Bar Association,* the Board of Governors shall have the power, subject to the approval of the House of Delegates, to agree upon, establish, and put in force such a system of joint dues, *applicable to the members of both Associations or to the members of both Associations under the age of thirty-six (36) years as the case may be,* determine the total amount of such joint dues, fix the division of the same between the two Associations, and determine the method of billing and collection therefor."

IV

NOTICE IS HEREBY GIVEN that Clarence E. Martin, of Martinsburg, West Virginia, a member of the American Bar Association, has filed with the Secretary of the Association the following proposed amendment to the Constitution of the Association:

Amend Article VIII, Section 3, of the Constitution of the American Bar Association as follows:

In line 3, insert immediately after the words "each Federal judicial circuit," the following:

"He shall be nominated by the state delegates representing such judicial circuit. If no one person receives a majority of the votes of the state delegates representing such judicial circuit for such nomination, then the nomination shall be made by the entire body of state delegates."

In line 4 strike out the word "he" with which the line commences and substitute therefor the words "the nominee."

In lines 5 and 6, strike out the words "and shall be, or shall have been, a member of the House of Delegates," and insert in lieu thereof the following:

"and a member in good standing of the American Bar Association."

So that Article VIII, Section 3, as proposed to be amended, shall then read as follows:

"Section 3. *Choice of Board of Governors by Circuits*—A member of the Board of Governors shall be chosen from each Federal judicial circuit. *He shall be nominated by the state delegates representing such judicial circuit. If no one person receives a majority of the votes of the state delegates representing such judicial circuit for such nomination, then the nomination shall be made by the entire body of state delegates.*

"At the time of his nomination, *the nominee* shall be a resident of the circuit from which he is chosen *and a member in good standing of the American Bar Association.* He shall be elected for a term beginning with the adjournment of the annual meeting at which he is elected and ending with the adjournment of the third annual meeting next following his election. The District of Columbia shall be considered as a part of the fourth circuit. In 1936, a member of the Board of Governors shall be elected from each the first, second, sixth and tenth circuits; in 1937, from the third, fifth, and ninth circuits; in 1938, from the fourth, seventh and eighth circuits. After the year 1936, all elections upon nominations made as hereinbefore provided, shall be by the House of Delegates on the first day of its annual meeting."

V

NOTICE IS HEREBY GIVEN that William L. Ransom, of New York City, and Arthur T. Vanderbilt, of Newark, New Jersey, members of the American Bar Association, and members of the House of Delegates, have filed with the Secretary of the Association the following proposed amendment to the Constitution of the Association:

Amend Article V, Section 3, by inserting after line 22 thereof, which reads, "The Solicitor-General of the United States," the following line:

"The Director of the Administrative Office of the United States Courts;"

[Article V, Section 3, as proposed to be amended, is set forth after paragraph VI below.]

VI

NOTICE IS HEREBY GIVEN that William Logan Martin of Birmingham, Alabama, Floyd E. Thompson of Chicago, Illinois, W. E. Stanley of Wichita, Kansas, George H. Bond of Syracuse, New York, Morris B. Mitchell of Minneapolis, Minnesota, Kenneth Teasdale of St. Louis, Missouri, and Frank C. Haymond of Fairmont, West Virginia, all members of the Association, have filed with the Secretary of the Association the following proposed amendment to the Constitution of the Association:

Amend Article V, Section 3 of the Constitution of the American Bar Association by inserting after line 29, which reads "The members of the Board of Governors," the following:

"The Past Presidents of the Association."

Article V, Section 3, as proposed to be amended by paragraphs V and VI above shall thereafter read as follows:

"SECTION 3. *Membership of House of Delegates.* The House of Delegates shall be composed of the following:

The State Delegates, one from each State, chosen as hereinafter provided;

The State Bar Association Delegates, chosen as hereinafter provided;

Such Local Bar Association Delegates as may be chosen by and from Local Bar Associations as hereinafter provided;

Eight Delegates chosen by the Assembly;

The Delegates of such membership organizations of the legal profession as may be admitted to affiliation pursuant to Section 7 of this article;

The President of the National Conference of Commissioners on Uniform State Laws;

The Chairman of the National Conference of Bar Examiners;

The Chairman of the National Conference of Judicial Councils;

The President of the Association of American Law Schools;

The Attorney-General of the United States;

The Solicitor-General of the United States;

The Director of the Administrative Office of the United States Courts;

The President of the National Association of Attorneys-General;

The Chairman, or, in his absence, the Vice-Chairman of each Section of the Association;

The President, Secretary, and the Treasurer of the Association;

The members of the Board of Governors;

The Past Presidents of the Association.

No person shall be eligible to be a member of the House of Delegates in any capacity, who is not a member of the American Bar Association in good standing."

HARRY S. KNIGHT, Secretary.

JUNIOR BAR NOTES

BY JOSEPH HARRISON
Secretary of the Junior Bar Conference

EVENTS move so kaleidoscopically in this world of "blitz-krieg" that planners of programs for little over than a month away must use caution and label the results of their efforts, "tentative program." Elsewhere in this issue there appears the complete and detailed "tentative" program of the Seventh Annual Meeting of the Junior Bar Conference at Philadelphia. Attention is called to an especially interesting feature of the opening session on Sunday afternoon, September 8th. This is the symposium on "The Young Lawyer's Part in National Security." A panel of discussion leaders consisting of representatives from all sections of the country will, it is hoped, present a cross-section of national opinion. They will be followed by discussion from the floor. With the lawyers' specialized training for analytical consideration it is hoped that the symposium will produce a worth-while contribution to the resolving of all-important questions.

Resolution for Annual Meeting

Robert M. Clark, Topeka, Kansas, has been appointed by Chairman Paul F. Hannah as chairman of the Resolutions Committee for the annual meeting. The committee will hold open hearings at the Bellevue-Stratford Hotel on Monday afternoon, September 9th. However, all members of the Junior Bar Conference who intend to present resolutions are earnestly requested to send them to Mr. Clark as soon as possible so that the Resolutions Committee may give full consideration to them. As all resolutions must pass through this committee and since a flood of resolutions at the meeting itself makes it difficult for the committee to give ample time to each one, it is desirable to have as many as possible considered in advance. Resolutions should be sent to Mr. Robert M. Clark, Ninth and Jackson Streets, Topeka, Kansas. It is requested that an original and seven copies be sent so that they may be distributed to other members of the committee. These include: Frank L. Dewey, New York City; Hyman J. Cohen, Boston, Mass.; Herzel H. E. Plaine, Newark, N. J.; Leo Franklin, Detroit, Mich.; Ronald C. Green, Jr., Providence, R. I.; and George Guy, Cheyenne, Wyo.

Special Convention Committees

Chairman Hannah has announced the appointment of the following committees in connection with the annual meeting:

Program Committee—Joseph D. Calhoun, Media, Pa., Chairman; L. Stanley Ford, Hackensack, N. J., and Lewis F. Powell, Jr., Richmond, Va. Rules Committee—Henry Bane, Durham, N. C., Chairman; Earl F. Morris, Columbus, Ohio; Harold H. Krowech, Los Angeles, Calif.; Mrs. Marguerite R. Fay, Portland, Me.; Charles J. Stinchcomb, Baltimore, Md.; John H. Anderson, Jr., Raleigh, N. C., and David A. Fraser, Syracuse, N. Y. Elections Committee—R. Grenville Burke, New York City, Chairman; Trueman E. O'Quinn, Austin, Texas; John Dickinson, St. Petersburg, Fla.; Robert W. Pharr, Memphis, Tenn.; Vernon Burt, Cleveland, O.; and Donald B. Hatmaker, Chicago, Ill.

The personnel of the Nominating Committee will be

announced at the conclusion of the first general session of the meeting on Sunday afternoon.

State Chairmen Report

At this writing reports have been received from approximately three-quarters of the state chairmen. As is to be expected these include, with one or two exceptions, the state where Conference activities have been carried forward with exceptional enthusiasm. It would be anticipating Chairman Hannah's annual report to the Conference to discuss the state reports at this time. It is fair to say, however, that a larger number than heretofore indicate that the Conference program has taken root and is making substantial progress in more states than at any time during the past six years.

Work Through Summer Months

Many state chairmen indicate that Conference activities, particularly the Public Information Program, will be carried on throughout the summer months. James D. Fellers, Oklahoma City, Okla., member of the Executive Council from the Tenth Circuit, has memorialized state chairmen in that area to continue their efforts and not to consider their work done with the filing of the annual reports. To do otherwise, would be to cause a two month lag in the program of the Conference. This loss of time added to that entailed by the annual change of administration would mean practically one-third of the calendar year lost to the Conference. This general problem has been considered by the Council. One proposal advanced to remedy this situation is to put the Conference on a calendar year basis instead of the present Association year schedule. This is one of the recommendations that may be considered at the Philadelphia meeting. Lewis F. Powell, Jr., chairman of the Activities Committee, would welcome the thought of Conference members on this subject.

1444 New Members

According to the report of Willett N. Gorham, Chicago, Ill., Chairman of the Conference Membership Committee, 1444 new members were added to the roster of the Junior Bar Conference from July 1, 1939, to June 30, 1940. Of this number 1,012 are credited directly to the efforts of the Conference. Mr. Gorham writes: "It will be appreciated if some special effort were made between now and September, particularly in the Second, Third and Fourth Circuits, where prospects would undoubtedly be interested in attending the annual meeting at Philadelphia."

Young Man, Go West (or South)

ACCORDING to a recent survey conducted by the United States Department of Labor, it would appear that lawyers on the west coast are busier and receive more fees than their eastern brothers. This statement is limited, however, to practice characterized as "family legal services." Corporate and commercial practices were not within the purview of the survey. Nevertheless, the results are interesting.

While Philadelphia lawyers are consulted by one family in 100 and receive $179 income per 100 families each year, the lawyers of Seattle, Washington are consulted by one family in every 22 and receive $369 a year for legal services per 100 families. Even with this large disparity between these two cities, Philadelphia ranks first among the large cities on the eastern seaboard according to the report. Horace Greeley's advice to young men may still have meaning for some young lawyers in the East.

But it also seems that opportunity beckons to American lawyers from another direction. It appears that the government in its desire to strengthen its policy of hemisphere defense is calling to the attention of lawyers in this country the advantages of moving to South America. It seems that American lawyers have played the role of pioneers before in this country's history. . . .

Editorial from
New Jersey Law Journal, July 11, 1940
Joseph Harrison, Editor

Opening the "Open Forum"

AT the Annual Meeting in Philadelphia the Open Forum should be open in fact as well as in name.

The Constitution, Article IV, Section 2, provides that, at each Annual Meeting at the opening session of the Assembly, "any member of the Association may present in writing any resolution pertinent to the legal profession or to the objects of the Association, or in relation to any report of any officer, section, or committee of the Association." It provides that such resolutions "shall be referred to the Resolutions Committee, without debate at that time," that the Resolutions Committee shall hold public hearings on such resolutions, and thereafter make its report to "an open forum session of the Assembly."

Pursuant to this provision of the Constitution, such resolutions may be presented at the meeting of the Assembly, Monday morning, September 9th, at which time they will be referred, without debate, to the Resolutions Committee of which former president F. H. Stinchfield is Chairman.

Following full hearings before the Committee, the Committee will report at the "open forum" of the Assembly on Thursday morning.

As I construe the provisions of the Constitution, it was intended that at the "open forum" the proponents of resolutions should be given a full and fair opportunity to speak in support of the adoption thereof. But the Constitution provides that *"the Committee's report* shall be open to debate by the Assembly and a vote shall be taken *thereon."* And, when the Committee reports adversely on any resolution, it has been the practice in the past to construe this provision as entitling spokesmen for the Committee to open and to close the argument—a practice that does not result in giving the proponents of the resolutions a full and fair opportunity to sustain their "burden of proof" in support thereof.

At the open forum in Philadelphia, unless and until I am overruled by the Assembly, I propose to construe the Constitution as entitling the proponents of all resolutions, regardless of whether the Committee report is favorable or unfavorable, to open and to close the argument. Following the argument, the vote will be taken on "the Committee's report," as provided in the Constitution; but, subject of course to my being overruled, the debate will be conducted in all respects as if the vote were to be taken on the resolution itself.

I hope that at Philadelphia the Assembly will support this procedure, to the end that all proponents of all resolutions may be given a full and fair opportunity to support their resolutions, and to the end that the "open forum" may be open in fact as well as in name.

C. A. B.

LEGAL ETHICS

Cleveland Judge Disbarred for Publication of Opinion in Fictitious Case

MUNICIPAL JUDGE DAVID COPLAND, of Cleveland, Ohio, procured publication of an opinion in a fictitious case, which he entitled "Bartikean v. Bardos." His opinion appeared in the August 21, 1939, issue of the Ohio Law Reporter, and in 15 Ohio Opinions 108. It purported to be a decision in a suit by a husband to recover damages from his father-in-law for alienating his wife's affections. It announced two rules of law, as follows:

(1) The action of a parent made in good faith for the welfare of his child, advising the child to leave her husband, is not actionable when no malice is shown on the part of such parent.

(2) Where action is brought in this state for acts committed in another state, the law of the foreign state governs.

Common Pleas Judge Charles R. Sargent, of Jefferson, found Copland guilty of procuring publication of the opinion, held that his conduct in so doing involved moral turpitude, and entered an order on July 8, forever disbarring him fom the practice of law. Although inactive for some time, Judge Copland has continued to draw his $9,000 annual judicial salary. His counsel have announced that an appeal will be taken from the order of disbarment.

Attorney Disbarred for Employing Laymen to Solicit

In a proceeding instituted by the Association of the Bar of the City of New York, S. Samuel Weinberger, also known as Sidney S. Weinberger, was disbarred by the Appellate Division, First Department, for employing Louis and Max Solomon, laymen, to solicit and procure retainers in personal injury cases pursuant to an agreement to pay them a part of the fees collected by him in such cases. It appeared that, between 1925, when he was admitted to practice, and 1932, Weinberger obtained retainers in more than 800 cases through their efforts. *In re Weinberger,* 20 N. Y. S. (2d) 339.

In another case, in which the Westchester County Bar Association charged an attorney with paying laymen to solicit for him, the Appellate Division, Second Department, said:

> "Had respondent been frank and admitted what was clearly the fact, as found by the learned Official Referee, that he had paid a layman for soliciting and procuring for prosecution by him as an attorney a few claims for personal injuries and awards of unknown owners in condemnation proceedings, the court would have been disposed to follow the recommendation that respondent be censured. However, the court may not overlook the unwarranted denials and, therefore, directs that respondent be suspended from the practice of the law but, because of his good reputation, limits the period to three months."

In re Deady, 19 N. Y. S. (2d) 785.

Kentucky Court Distinguishes Between Personal Solicitation and Solicitation by Runner

In a recent disciplinary proceeding in Kentucky, *Louisville Bar Assn. v. Hubbard,* 139 S. W. (2d) 773, a Louisville attorney was charged with solicitation of personal injury cases through himself and his chauffeur.

The respondent, admitted to practice in 1911, lived in the country some twelve miles from Louisville. His physician advised him not to drive a car. His wife, who served as his secretary, drove him to and from his office and home. He hired as a chauffeur George Eaton, a negro about forty-nine years of age, who resides in Louisville, at $30 a month. He testified that Eaton's only duties were to drive him about the city, to run errands for him, occasionally to locate colored witnesses and make investigations among them.

Concerning Eaton, the court said:

> "But the record convinces us Eaton's duties were not limited to those of a chauffeur, and he plays a prominent part in the first four cases mentioned in the first charge, and also in the McCall case mentioned in the second charge. . . . For just a chauffeur, Easton possessed rare qualities for being in the company of those who just a few hours previously suffered personal injuries in accidents, but his ubiquity appears not to have interfered with his duties as a chauffeur for respondent. No fair mind can read this record without being convinced Eaton was employed by respondent not only as a chauffeur but also as a solicitor of negligence cases, and that Eaton was most energetic, aggresive and efficient in the latter work."

The court distinguished between personal solicitation and solicitation through runners and stated that, within the "bounds of propriety," the courts will impose no discipline for personal solicitation.

The attorney was suspended from the practice for three years and publicly reprimanded.

The suggestion that no personal solicitation is condoned but only the more revolting types will result in discipline by the courts is new and would not be generally approved.

California Law Clerk Fined for Unauthorized Practice

Three superior court judges, though conceding that a twilight zone exists between the proper functions of a lawyer and those of a law clerk had no difficulty in deciding that a clerk who instituted an attachment proceeding and subsequently settled it was on the wrong side of the line.

The clerk in question had been haled into municipal court by the state bar on a contempt charge and had been convicted and fined $100. The superior court judges refused to disturb the conviction.

Evidence presented by the state bar disclosed that the clerk accepted a contract claim for collection, filed suit and levied attachment against cattle belonging to the debtor. Subsequently, he settled the claim and paid the claimant a percentage previously agreed upon, the decision recited.

"We will not attempt to draw a sharp line of demarcation between the function of a law clerk and an attorney," the three-judge opinion stated. "It is sufficient to say that the licensed attorney occupies a position of trust and confidence and that his admission to the bar depends upon a proper showing of skill, learning and good moral character. It is to prevent the dangers from reliance upon persons not possessing these qualifications that the State prohibits unlicensed persons from practicing law. Certainly it may be said that where the law clerk makes the initial contact with the client and not only collects the data but fixes a fee and suggests the remedy and thereafter proceeds in the manner indicated by him, he far exceeds the recognized and proper functions of a clerk."

In the opinion the court approved the bringing of constructive contempt proceedings by an affidavit based largely upon information and belief. The three judges also held that the one-year statute of limitations for filing misdemeanor complaints does not apply to contempt prosecutions.

By Committee on Professional Ethics and Grievances
Hon. Herschel W. Arant, Chairman

CURRENT LEGAL LITERATURE

Among Recent Books

WITHIN THE LAW, by Maurice Rubin. 1940. New York: Pegasus Publishing Company. Pp. 256.—No lawyer will read this two hundred and fifty page story of the professional life of fairly successful Counselor Peel of Bunkton without interest, entertainment, and, certainly to the young practitioner, instruction—not to mention, at least on the part of more than a few, some distaste.

It is very readable—flowing along very smoothly and taking naturally in its course a long string of illuminating incidents that give the picture of the counselor's life—his trials, tribulations, successes, failures, clients of all kinds, and judges, loads of judges, a muck from which he scoops the bubbles of his philosophy. I could not but see in nearly every page some fragment of my own professional life, recalling to mind now some unhappy hour, but thankfully, more often, pleasant ones. And the mistakes which Peel made would be found in a catalogue of any lawyer's. Had I read this book twenty-five years ago, really read it, many of the errors of judgment to which I must plead guilty might have been avoided.

It was ironical enough that Peel at the end of the trail of his practice found himself in a position he had never desired—a judgeship almost forced upon him, and worse, seemingly headed toward a supineness to political influence which he had found all too frequently and so despicable in those who wear the ermine. To a small-town western lawyer, who, throughout thirty odd years of practice, has known of less venal judges than he has fingers on one hand, it would seem that a judge who is influenced, however slightly and rarely, in his decisions by his political affiliations or political "boss," is as corrupt, or nearly so, as the one who takes a bribe. That there are such judges, everyone knows—but it is a shock to be told, even in fiction, where the author is himself a lawyer of many year's experience at the bar, that there is any considerable number of them. By no means does the author condemn all judges—he is high in his praise of some for their courage and independence.

This, however, is the sour note in the book—but taken all in all, I think any lawyer or would-be lawyer, and many laymen, will find enjoyment and instruction in its pages.

GERALD JONES.

Tucson, Arizona.

The Antiquities of Bail: Origin and Historical Development in Criminal Cases to the Year 1275, by Elsa de Haas. 1940. New York: Columbia University Press. Pp. viii, 174.—In this exhaustive study Miss de Haas presents the data about the institution of bail as it appeared in England up to the date indicated in the sub-title, which is about the beginning of the reign of Edward I. There is a preliminary study of the origin of bail, a chapter on the relation of bail to frankpledge and two chapters on the writs used for the purpose of bailing persons, *de homine replegiando, de manucaptione, de odio et atia* and *de ponendo*. There are four appendices dealing with minor points, seven plates and a full bibliography. I miss only K. von Amira's study on *Wadiation* in the Munich Sitzungsb. phil. Cl. 1911, No. 2.

Miss de Haas has ransacked the records both in manuscript and in print to an extent that makes it fairly certain that her book will make it unnecessary to repeat her search. Her technical competence is overwhelmingly demonstrated. In any further re-examination of the subject, we may gratefully use her references to the specific passages from the rolls, and feel confident that little or nothing has been missed.

Such a reexamination every historian will doubtless wish to make for himself. Miss de Haas' analysis will not convince those who wish to fit the facts—they are all here—into a different theory. The chapter on origins is rather unsatisfactory. It is confined to the examination of some Continental German doctrines. Miss de Haas apparently approves of Beyerle's theory that the bail-surety had never been a hostage. That runs counter to the "body for body" formula in the English development, and the use of *hostage* in the French sources and *hostagium* (*ostagium*) in the Latin. Besides, Beyerle seemed to have no more adequate basis for criticism of the hostage-theory than the fact that he found it difficult to believe that any surety would take such a risk for his principal. However, the limitations a German scholar finds in his imagination about medieval conditions are after all not conclusive.

There are slight confusions here and there in Miss de Haas' own presentation. She refers to four irreplevisable offenses in Bracton (p. 65) and then lists five, and the last one becomes on p. 68 a general class for all of them. Again there is no significance in the fact that a Register refers to the "custom of England" and that Bracton says "the law of England" (pp. 69-70). *Lex* and *consuetudo* were interchangeable in the thirteenth century in this context. Nor does it seem, for all the heaping up of instances in Chapter III, that the much mooted distinction between bail and mainprise is made appreciably clearer.

One very curious slip concerns the oldest known Register (p. 64), so fully discussed by Maitland. Maitland does not in the least say that the Register was older than the writ, but on the contrary that it was of the same date. Miss de Haas has read the phrase "forty years younger than Glanvill's treatise" as though it were forty years before Glanvill. This causes her to put the Register in the "middle of the 12th century"—which would be in the reign of Stephen or the very earliest years of Henry II—and so to date its facsimile (Plate A). A register as full as this, forty years before Glanvill, would be an historical find that would require the complete rewriting of English legal history.

It is too bad that Miss de Haas chose to use the word "Antiquities" in her title. That term was used in the sixteenth and seventeenth centuries by English lawyers who had no concept of historical methods. We

have passed beyond that, and Miss de Haas' book is proof of it.

University of California.
Berkeley, California. MAX RADIN.

Matrimonial Shoals, by Royal D. Rood. 1939. Detroit: Detroit Law Book Co. Pp. xii, 424. This book, written by a member of the Detroit bar, might well be entitled a "memorial of social protest." In a sense it may typify the conflict between a certain section of the American bar and the social worker or public welfare administrator. In another sense it is a revelation of the deep conflict between the older accepted *mores* of a society in which the patriarchal family was the unit and the present-day trend towards an atomistic society made up of individuals bound together by many other loyalties more or less in conflict with family loyalty. It represents then a phase of the conflict between law and social change, and particularly social change as manifested in the assumption by other agencies—government, school, church, recreational center—of functions formerly performed by the family of the narrow integrated patriarchal type. The author's purpose ostensibly is to offer a study of metropolitan divorce trends and to explain them. Actually the spearhead of his thesis is that the professional feminist has been permitted to destroy rather than to increase the happiness and security of the women and children involved in divorce. He is sincerely concerned over "the real plight of the alimony child." His general theory is that legislators and social workers have gradually broken down the patriarchal family in which both wife and children obeyed the bread winner, and have succeeded to a large extent in replacing this natural family by an artificial family with its center in governmental welfare agencies. Put in another way, his thesis is that the self-sufficiency of each family in providing for the security of its own members has been frustrated by the professional feminists and their tools: namely, social workers, judges, referees, and writers on domestic relations. In the course of his argument he gives an extensive review of the evolution of domestic law in the State of Michigan. Bit by bit he builds up the evidence as to how the only people who profit by divorce are the divorcées, the social workers, the people who want trial marriage, and the tax authorities. He singles out for special criticism the social workers on the grounds that they are authoritarian, dictatorial, beyond the law, provocative, inclined to a government of men rather than of law. For some of these criticisms and for some of his concepts he acknowledges indebtedness to Professor E. R. Mowrer's several books in the field of the family. As a remedy for the divorce racket he recommends going back gradually to the common law and to the use of the jury in divorce proceedings, and particularly insofar as possible to leave the children concerned with what he repeatedly calls "the sweating parent." Nearly half the book is a verbatim transcription of all of the records in a single case in which he appeared as attorney. This book may be well characterized as *ex parte* and as expounding a form of doctrine entirely out of line with present-day trends. It is to be commended, however, if for no other reason than its vigorous statement of a point of view which may easily be obscured by fogs of sentimentality and false humanitarianism. It may serve for both social workers and lawyers as a useful mirror. ARTHUR J. TODD.

Northwestern University.

Recent Legal Periodicals

CONSTITUTIONAL LAW

Gibbons v. Ogden, Then And Now, by Hugh Evander Willis, in 28 Kentucky L. Jour. 280. (March, 1940).

A brief review of the history and decision in Gibbons v. Ogden affords a starting place for setting forth very tersely the decisions of the Supreme Court in its interpretation of the Commerce Clause. Great is the admiration for John Marshall. His followers are listed "as such justices as Holmes, Hughes, Brandeis, Stone, and Cardozo." The expression of alarm by Mr. Hogan before the American Bar Association last year is based on the decisions of Butler, McReynolds, Sutherland, and Van Devanter, who dominated the court from about 1922 to 1936, and on "a few decisions of such justices as Field, Fuller, and Peckham in the period dominated by them from 1890 to 1910. Exception is taken, however, to Jackson's reply to Hogan. The recent decisions have not "simply removed the successive layers of oil" spread on the original document. They have taken us back to a constitution made mostly by Marshall and his associates prior to the Civil War, but partly by the justices immediately after the Civil War and by the justices between 1910 and 1922.

Non-Natural Persons And The Guarantee of "Liberty" Under The Due Process Clause, by D. J. Farage, in 28 Kentucky L. Jour. 269. (March, 1940).

Observe this curious development. Within the due process clause of the Fourteenth Amendment a corporation or an unincorporated association is a "person" for the purpose of protection to its property. But it is not clear whether non-natural persons are entitled to liberty within the same clause. The recent Hague case held that they were not. Reliance was placed upon the Riggs and Greenburg cases. In both cases the utterance was a dictum. In the Pierce case, not cited in the Hague opinion, a similar utterance was dictum. No explanation for these dicta has ever been given by the Supreme Court. On the other hand, the Grosjean case, ignored these dicta and squarely held that corporations publishing newspapers were entitled to their liberty under the due process clause. In turn, the Grosjean case was ignored in the Hague opinion. The Adkins and Carter cases, in the majority opinions, give implicit recognition to the doctrine that corporations are entitled to their liberty under the Fifth Amendment. We are warned that "to recede from the position of *Grosjean v. American Press Company* in this day of corporate radio and newspaper activity merely because of the artificial character of the litigant, would be to deny protection as to free speech at the necessary and principal sources of public information where such protection is most needed."

CRIMINAL LAW

What Happens to Perjurers, by H. L. McClintock, in 24 Minnesota L. Rev. 727. (May, 1940).

Perjurers lead a rather charmed life as far as confinement in penal institutions is concerned. Not many of them are confined. It appears that only a very small percentage of the instances are investigated, and that of the prosecutions instituted 38.5 per cent of them were disposed of for reasons that did not involve a determination on the merits. Modern decisions concerning the crime are not always commendable, and the "two witness" rule should be abandoned. Never-

theless we must look elsewhere for the explanation of the scarcity of perjury prosecutions. The trouble seems to be that in most cases nobody has any particular interest in prosecuting perjury cases. There is no specific remedy for this trouble. We must work for the development of a professional and official conviction of a duty to abolish perjury by holding lawyers, judges, and officers to a steady performance of a very disagreeable duty.

INTERNATIONAL LAW

The Mexican Expropriations, by Josef L. Kunz, in 17 New York University L. Qu. Rev. 327. (March, 1940).

The Mexican revolution started in 1910 and has not yet come to an end. The two primary objectives seem to have been: (1) to deprive the owners of the large haciendas of their soil (agrarian reform) and (2) to deprive the owners of the sub-soil of their mineral wealth ("Mexicanization of industry"). Prior to the World War of 1914-1918 private property could be expropriated but in order to be legal it must be for reason of public utility, in the manner provided by law, and accompanied by just, effective, and prompt compensation. Otherwise, the taking would be illegal confiscation. This has continued to be the rule even though in the post war period it has been attacked and, from a sociological point of view, may be in a state of transition. But Mexico denies that international law requires compensation in the particular category of land expropriations since 1927 because, apparently, it has treated its nationals the same as foreigners and because the rule of international law is not universally accepted. The expropriations of oil properties in 1938 are a different story. Mexico asserts its willingness under international law to pay for the surface properties, such as pipe lines and buildings, but will not consider compensation for the oil beneath the surface.

LABOR RELATIONS

The Right To Discharge Employees For "Union Activity," by Henry S. Drinker, in 88 U. of Pennsylvania L. Rev. 806. (May, 1940).

The general purpose is to consider to what extent an employer under the National Labor Relations Act may discharge his employees in connection with a labor dispute. After reviewing the pertinent provisions of the Act, and the Greyhound, Mackay, Fansteel, Columbian Stamping Co., Sands, and Waterman Steamship cases in the Supreme Court, the author concludes that there is nothing in these decisions contrary to the principle he advocates, viz.: "that an employer, who has in good faith observed the mandates of the Act and has committed no unfair labor practice in violation thereof, is justified, when his employees resort to coercion by collectively exercising their reserved right to strike, in defending himself by exercising his own reserved right to operate his plant efficiently and accordingly to discharge them for the sole reason that he prefers employees not so prone to strike." However, the attitude of some of the circuit courts of appeal is regarded as contrary to this principle, and the National Labor Relations Board in its decisions has announced a contrary point of view. Nevertheless, the author insists that while employees may strike whenever they choose, yet if they do that "in the absence of an unfair labor practice by the employer, they run the risk that, if they cannot by the strike coerce the employer into complying with their demands, they may lose their jobs."

LEGAL AID

Legal Aid To The Poor, by Sidney B. Jacoby, in 53 Harvard L. Rev. 940. (April, 1940).

"Equal justice for the poor actually is one of the gravest social and legal problems of our times. . . . ." The performance of legal aid work by bar associations in this country is regarded as a desirable solution after reviewing attempts to solve the problem here and in Europe. Administrative procedure, for example under the workmen's compensation laws, has been helpful in solving part of the problem. Here are some of the problems which have been encountered: (1) What should be the test of poverty and how will it be applied? (2) What should be the standard by which worthy are sifted from unworthy claims and who will apply the standards? (3) Are the lawyers who represent the poor to be compensated and, if so, by whom? (4) What of solving the problem for people in moderate circumstances, who do not want charity, by a system of compulsory legal aid insurance?

PUBLIC LAW

Liability of the United States Government in Tort, by E. E. Naylor, in 14 Tulane Law Rev. 407. (April, 1940).

Under the legislation establishing the treasury department in 1789 its auditor adjusted the accounts of the United States. His decisions were subject to revision by the Comptroller. A statute in 1817 enlarged the duties of these accounting officers in the settlement of claims by and against the United States and their decisions were final except for a petition to Congress for relief. This burden on Congress caused the creation of the Court of Claims in 1855 and the passage of the Tucker Act in 1887. The apparently confused cases of the personal liability of governmental agents and officers for the invasion of property, and for torts against the person, and the admittedly confused cases concerning the liability of governmental corporations for torts are also discussed.

TRADE REGULATION

Trust Dissolution: "Atomizing" Business Units of Monopolistic Size, by George Ellery Hale, in 40 Columbia L. Rev. 615. (April, 1940).

What has been done in dissolving monopolies is reviewed by considering the judicial dissolutions of the oil, tobacco, powder, harvester, glucose, and the photographic equipment trusts. The result has been that "commercial triumphs among the successor units are almost universal" and "the decrees have largely failed to secure competitive conditions which measure up to the 'atomistic' standards of theoretical economics." What should be the policy for the future? A definite, comprehensive answer to this large question does not seem to be made. The most vital problem that confronts a court is how large a successor business unit should be. There are problems of vertical, circuitous, distribution, and territorial integration, the problem of brands, and the problem of launching the new units. The latter requires personnel, inventories, cash, and re-arrangement of the capital structure. Then the dissolution decree should provide for the continued independence of the successor units. There is a hint that this business of dissolution is so complex that it may be better to vest the power in administrative rather than judicial officials.

KENNETH C. SEARS,
Professor of Law, University of Chicago

SYMPOSIUM OF LETTERS ON PHILADELPHIA MEETING

The JOURNAL was interested in making a sort of informal factual Survey of the reasons which lead members to attend annual meetings. We therefore "sampled" the country (as represented by the Reservation List) in the accepted "poll" method. Herewith are the results. We believe the members will read these letters with interest. They have been interesting and stimulating to us.

Judges

Charlotte, N. C.

Editor, ABA JOURNAL:

Answering your inquiry of the 3rd instant as to why I am attending the Philadelphia meeting of the American Bar Association, I will say that there are three reasons which influence me to do so: (1) I find the meetings of the Association helpful in keeping abreast of legal thought; (2) the meetings furnish opportunity to participate in movements looking to the solution of legal problems and the improvement of legal administration; and (3) they enable me to meet friends from distant parts of the country, whom I seldom see except on such occasions, and form a personal acquaintance with men from other sections who are interested, as I am, in the various aspects of legal development. As a federal judge, I find it particularly helpful in the performance of my duties to know what the bar of the country is doing and thinking. The meetings of the Association not only enable me to learn this at first hand, but also to join with the bar in their worth while efforts to improve the administration of justice. I hope that an increasing number of our judges, state as well as federal, may attend these meetings.

Sincerely yours,

JOHN J. PARKER, *Judge*
United States Circuit Court of Appeals, Fourth Judicial Circuit.

New Haven, Conn.

Editor, ABA JOURNAL:

The compelling reason for the movement on to Philadelphia is, as the wife puts it succinctly and disrespectfully, "to get together with the boys." One can read the speeches later and with perhaps less pain; one can only renew old friendships and make new ones by personal appearance.

CHARLES E. CLARK, *Judge.*
United States Circuit Court of Appeals

Kansas City, Mo.

Editor ABA JOURNAL:

I shall attend the annual meeting of the American Bar Association in Philadelphia if it is possible for me to do so primarily because I have been entrusted with membership in the Council of the Section of Judicial Administration and the Section of Legal Education and desire to do my full duty.

There is another reason, however, on account of which I have always, when possible, attended the annual meetings of the American Bar Association. I feel that it is one way in which I can manifest my loyalty to the bar and my earnest desire to identify myself with it and its many interests.

Very truly yours,

MERRILL E. OTIS, *Judge*
United States District Court

Harrisburg, Pennsylvania

Editor, ABA JOURNAL:

I am always anxious to help the ABA activities, and pursuant to your request I am writing this letter. My interest in the American Bar Association is of approximately 40 years' duration.

When I was a very young lawyer attending my first meeting I was thrown into contact, in an interesting and attractive way, with some of the leaders of the bar of another state. Shortly after that meeting, and solely because of that association, I received my first out-of-state business from one of those lawyers, which yielded me a substantial fee. Aside from that, the contacts through the years with leaders of the bar of the country have been one of the interesting, pleasant, and unforgettable features of my professional life.

Attendance at American Bar Association meetings broadens a lawyer's views concerning the juridical practices and experience of the various states, adds materially to his information concerning the development of the law, and enables him, depending upon his individual activity, to some extent, to take some part in the advancement and evolution of the law.

Sincerely yours,

WM. M. HARGEST, *President Judge, 12th Judicial District of Pennsylvania; also President of Pennsylvania Bar Association [1940].*

Boise, Idaho

Editor, ABA JOURNAL:

Answering your question: I would like to attend the Philadelphia meeting because I always enjoy the Association meetings, which I've been attending with some degree of regularity for twenty-five years.

It is worth the time and expense to get "the other fellow's" viewpoint on issues constantly arising; it refreshes and stimulates thought and imagination. Moreover, the personal contacts and friendships made in the course of the years blend into one's life and strengthen him for further endeavors in his work.

As for Philadelphia—well, it's an interesting place and an ideal convention city; it is rich in American history. It is a good place in which to meet the leaders of America's legal thought and statesmanship—unfettered by partisanship.

Sincerely yours,

JAMES F. AILSHIE,
Chief Justice, Supreme Court, Idaho

Law Schools

[TELEGRAM]
Boulder, Colo.

Editor, ABA JOURNAL:

Replying to your request for reasons for attending Philadelphia meeting, am particularly interested in legal education and am convinced that American Bar Association is most effective agency for improving standards of legal education and admission to bar. Therefore am anxious to do everything possible to further this vital professional activity.

ROBERT L. STEARNS, *President, University of Colorado.*

Urbana, Illinois

Editor ABA JOURNAL:

To separate and label the various motivations which impel me toward Philadelphia in September really calls for a thorough-going job of psychoanalysis. I expect to go to Philadelphia early, for I am a Commissioner on Uniform State Laws and the Conference goes into session on September 2nd. I am a member of the Council of Legal Education and the important work it and the Section are doing would take me to Philadelphia if nothing else would. But there are other factors, among them seeing and "conviving" with friends and having a part in giving expression to the thought and ideals of the profession through its great instrument, the American Bar Association, which constitute reasons sufficient in themselves for my attendance. Yes, indeed, I will be there.

ALBERT J. HARNO, *Dean.*
College of Law, University of Illinois

Durham, N. C.

Editor, ABA JOURNAL:

I expect to attend the Philadelphia meeting. As a law school dean, I feel that it is very necessary to keep in touch with the activities of lawyers as presented at the American Bar Association meeting. I have also found it extremely valuable to get the personal reactions of prominent members of the bar to present-day legal education. Personally and professionally, it involves the most valuable contacts of the year.

Very sincerely yours,
H. C. HORACK, *Dean.*
Duke University School of Law

Chicago, Ill.

Editor, ABA JOURNAL:

I am glad to write, as you have suggested, noting some of the reasons why I am looking forward to attending the annual meeting of the American Bar Association in Philadelphia.

As a teacher of law, I consider it of great value to maintain contacts with practicing lawyers, particularly in the specialties in which I am interested. I look forward to the annual meetings of the Association as one of the best means of developing these contacts.

I always find in the programs of the Sections on Legal Education and Admission to the Bar and on Commercial Law, discussions which contribute valuable suggestions.

The luncheon meeting of alumni of the University of Chicago Law School gives me a unique opportunity to discuss with our graduates from all over the country the development of the new program of the school.

Perhaps I should add that this year the program of entertainment in Philadelphia is particularly attractive.

Sincerely yours,
WILBER G. KATZ, *Dean.*
The University of Chicago Law School

Women Lawyers

Topeka, Kans.

Editor, ABA JOURNAL:

The reason I am attending the Philadelphia meeting is because I happened to be in Grand Rapids on business at the time the American Bar met there and I attended the sessions, and was acting secretary when the real property division was organized. My work is real property and probate work and, therefore, I am interested in anything the American Bar may do along these lines. Then, too, I happen to be chairman of one of the Real Property committees and am to make a report on Improvement of Records and Conveyancing at the convention. Probably this is another reason for attending. Having been born under the Union Jack and being a naturalized citizen of the United States, I am also intensely interested in international affairs and enjoy attending the meetings of the International law section.

MARGARET MCGURNAGHAN,

Chicago, Ill.

Editor, ABA JOURNAL:

For the past decade I have attended the American Bar Association's annual meetings, striving to be present at all the sessions I find of particular interest. This at times is quite a problem! As these sessions are the result of the intensive work of committees during the year, I fully appreciate their stimulating and educational value. As a member of both the American Bar Association and the National Association of Women Lawyers, I find that these annual meetings result in a better understanding of the current problems that beset us not only in the practice of law but in governmental problems which have assumed enormous economic importance, especially in these past years of swiftly changing standards and economic upheaval.

These meetings to me are a gateway to knowledge, an avenue to wider acquaintances, and last but not least, jolly fun!

HELEN M. CIRESE, *President, National Association of Women Lawyers.*

Trenton, N. J.

There are several reasons for my attending any meeting of the American Bar Association. To lawyers interested in maintaining the activity of their local and state bar associations, an exchange of ideas with others who are so interested is most valuable. Anyone who believes he can and should contribute to his profession through becoming an active member in any bar association, can find a wealth of information from those whose experiences show how he can serve best, and, not the least important, how much of his and others' time can be conserved by becoming somewhat familiar with ideas which are or are not workable.

Equal in importance to me is the opportunity to learn more law. Each meeting, especially if one attends the addresses along the lines of law in which he is particularly interested, becomes almost a postgraduate course. It is a privilege to have the summaries of the progress made from year to year made by experts in so many lines.

Nowhere else can one have all of this with such pleasant social contacts. To greet acquaintances year after year, to have friendships grow from these acquaintances, to enjoy with one's friends the successes which have been theirs, and to receive encouragement from the realization that others in one's own profession have had to struggle to succeed, is the crowning touch to the meeting of our American Bar Association. To see thousands of lawyers whose work makes each individual a potential opponent, fraternize with such rare good will and work together in a common cause under one leader, each forgetting his individual work to make a contribution to the public through our profession, is a rare privilege. Any one of these reasons alone would be sufficient to attract a lawyer to attend one of our meetings, but all three offer a rare opportunity which can come only to those who enjoy membership in our Association. ,

EMMA E. DILLON, *Secretary.*
New Jersey State Bar Association

Washington, D. C.

Editor, ABA JOURNAL:

There are as many answers to the question why I am attending the Philadelphia meeting as there are states in the Union, and the fact that all of these states will be represented at the Philadelphia meeting is one very good reason for attending it. Where else can one meet outstanding lawyers from every city and town in the United States, and hear them speak with authority on the

fields of law in which they specialize? If one doesn't agree with their views, the section meetings offer opportunity to present one's own.

When one tires of such informative speeches and arguments, Philadelphia provides a unique and interesting social program guaranteed to afford relaxation and entertainment to suit any taste. So varied and numerous are both the business and social events that even the Dionne quintuplets would find it hard to attend them all. Truly, the Philadelphia meeting will be a lawyer's paradise, through which one can wander aimlessly for pleasure, or proceed briskly according to plan. Whatever method one adopts, one is bound to gather new friends and new ideas.

These are the inducements one offers to first timers, but I am no longer one of those. This will be my seventh annual meeting, and I am coming to Philadelphia because I cannot bear to miss being there. Throughout the year here in the nation's capital, the so-called "A.B.A. group" meets informally from time to time, and the current pass word is "Of course you will be in Philadelphia." No salesmanship is necessary after one of our lawyers attends his or her first meeting.

Why? Because the Philadelphia meeting will give each lawyer in attendance new stimulus and enthusiasm with which to "carry on" for another year. Many factors combine to bring about this result, and these factors may be different in each individual case; but the effect is the same with all of us. It cannot be explained on paper. But if you attend, you will know what I mean.

BEATRICE A. CLEPHANE.

Junior Bar

Boston, Mass.

Editor, ABA JOURNAL:

My reasons for attending the Philadelphia meeting of the American Bar Association are two-fold: first, to renew old acquaintances with friends in the profession from all sections of the country and to make new friends; and secondly, to make my small contribution to the very vital work of the organized bar which seems to me to hold out the greatest hope for the survival of our calling as a true profession.

I hope that I will have the opportunity of meeting you at the Philadelphia meeting.

Sincerely yours,

LESLIE P. HEMRY,

Topeka, Kans.,

Editor, ABA JOURNAL:

I have attended the last four meetings of the Association and my wife and I now look forward each year to the meetings with the purpose in mind of including the convention as a part of our vacation.

To me the fellowship with those of my age throughout the country stands foremost among the number of reasons why I attend the meetings. I have such fond memories of the large number of men whom I have met at the previous meetings. This cordial relationship with younger members of the Bar throughout the country, and the desire to renew such contacts is sufficient reason, in my opinion, to attend the Philadelphia meeting.

Yours very truly,

ROBERT M. CLARK.

Chicago, Ill.

Editor, ABA JOURNAL:

There are many reasons why I plan to attend the annual meeting of the American Bar Association in Philadelphia this September, but perhaps the most important reason of all is the benefit to be gained by closer association with young lawyers throughout the country. It is very helpful and interesting, as well as enjoyable, to become better acquainted with these lawyers and to discuss with them their ideals and their problems in the light of my own.

Very truly yours,

WILLETT N. GORHAM

Bar in General

Louisville, Kentucky

Editor, ABA JOURNAL:

I have your letter of July 3, asking why I am attending the Philadelphia meeting of the American Bar Association.

As the senior member of the American Bar Association from Kentucky (elected over 40 years ago), I have watched the attendance at the annual meetings increase from something over 200 to 3 or 4 thousand, and the membership increase from about 1500 to more than 30,000; and while not a single Kentucky member attended the 1900 meeting, and I am the sole surviving Kentucky member of that period, there is now an excellent Kentucky representation at the annual meetings.

This is not only because of the greatly increased Kentucky membership from less than 30 to nearly 400, but because of the manifold excellent practical work which the Association is now doing through its meetings and other activities.

Consequently, in addition to the social pleasure of spending a few days with lawyers from all over the country (which was such a prominent factor in the attendance of 40 years ago), there is today the great advantage of learning something of what the bar is doing all over the United States, in a vast variety of directions of what no one thought of, or paid any attention to, in the olden days.

That is why I am going to the Philadelphia meeting; that is why I think many other members attend the meetings; that is why members who do not attend the meetings might with great profit to themselves and with added value to the Association, take the necessary few days off from their work and vacations to go to the Philadelphia meeting.

Very truly yours,

WM. MARSHALL BULLITT.

Cincinnati, Ohio

Editor, ABA JOURNAL:

I plan to attend the Philadelphia meeting, first, because I find the work of the House of Delegates, of which I am a member, extremely interesting and worth while. Second, I am interested in a number of the Sections, but always particularly enjoy and find especially useful, the meetings of the Municipal Law Section. Third, it is always a joy to meet old friends, particularly those in our profession. As Emerson said, "In such a spiritual matter as friendship, time is of no importance," and one can go for many years without encountering a friend and then, on meeting, pick up just where one left off. Fourth, and most important, it is a solemn duty of lawyers, as Mr. Chief Justice Hughes so well stated recently, to try to improve the administration of justice as an aid to democracy.

Every failure of democracy, such as the bad government prevailing in many sections of this country or poor administration of the law is a real danger, since it gives opponents of our form of government a talking point against it. It is, therefore, incumbent on the friend of democracy, so far as lies within his power, to strengthen the weak places in the armor of democracy. There is an inspiration in working with a group and especial stimulus from attending annual meetings of the American Bar Association and joining with one's fellows in seeking to carry out the high purposes of the Association.

MURRAY SEASONGOOD.

Los Angeles, California.

Editor, ABA JOURNAL:

I am sorry that (due to an absorbing trial) I am not able to answer you as thoughtfully as I would like and this letter necessarily is brief.

More than ten years of active work with the organized bar of this state, namely, The State Bar of California, not only has given me opportunity for activity which I hope in some measure has been helpful in the maintenance and improvement of the standards of my profession but also has afforded me some of the pleasantest associations of my professional life. What greater dividends could any activity pay!

In attending meetings of the American Bar Association and of the House of Delegates I am extending the field of operations, and so increasing my dividends. I find the national meetings broaden one's outlook substantially. Furthermore I am personally interested in certain measures which the American Bar Association has sponsored, principally the Administrative Law Bill, and I will be definitely interested in the report of the committee at the Philadelphia meeting on the matter of state administrative agencies.

With kind personal regards, I am,

Sincerely yours,

E. S. WILLIAMS.

Miami, Florida

Editor, ABA JOURNAL:

Members of the legal profession have a tendency to become backward in their thinking unless they constantly seek progressive ideas. The American Bar Association is a laboratory in which new ideas and new methods are developed. The annual meetings of the Association furnish the opportunity for testing and spreading these ideas and methods.

The motives which impel me to attend the annual meeting are:

(1) I desire to keep step with progressive development in our profession and in our Association.

(2) I enjoy the interesting and instructive programs.

(3) I appreciate the contacts made at the meetings with many of the leading lawyers of America.

(4) I regard the American Bar Association as a bulwark against totalitarianism and as an aid in the perpetuation of liberty, justice, and equality before the law.

(5) I deem it a privilege to visit, at low cost, our great American cities where the conventions are held.

Yours sincerely,

D. H. REDFEARN.

Austin, Minnesota

Editor, ABA JOURNAL:

Since you have been kind enough to send out your inquiry dated July 3, asking why I am attending the Philadelphia meeting, I feel that you should receive a reply.

I hope to attend this meeting because of the opportunity it gives me to pay a visit to the City of Brotherly Love and its historic surroundings.

With best wishes, I am,

Very truly yours,

S. D. CATHERWOOD.

Texarkana, Ark.

Editor, ABA JOURNAL:

I have been a member and attended most of the meetings of the American Bar Association for thirty-five years, and a member of the House of Delegates since the new constitution went into effect. I feel that it is especially important to attend the approaching meeting at Philadelphia, where the Constitution of the United States was written. There are problems of national importance which will require the bar to take a stand. We should get behind Congress in dealing with subjects of national defense and restriction of immigration laws and an amendment allowing women and children to be received from the British Isles and taken care of for the duration of the war.

We should approve the masterful action of the President (as advised by Senator Sheppard) in appointing Stimson and Knox to his cabinet, pro-Germans and pro-Italians to the contrary, and we should endorse the stand taken by these distinguished men upon subjects of foreign policy. The American lawyers and American people approve aiding the land of Shakespeare, Dickens, Scott and Macauley in its final stand for liberty, in supplying, unstintedly food, munitions and transportation.

See Remarks, Elihu Root, Saratoga, 1917:

"The American Bar Association declares its absolute and unqualified loyalty to the government of the United States. . . .

"Under whatever cover of pacificism or technicality such attempts" (to embarrass Congress) "are made, we deem them to be in spirit pro-German and in effect giving aid and comfort to the enemy."

Yours very truly,

W. H. ARNOLD.

Montgomery, Ala.

Editor, ABA JOURNAL:

Answering your letter, I like to attend conventions of the American Bar Association for several reasons.

1. Participation in its sessions and in the discussions which take place there:

a. helps to crystallize my thought regarding new ideas and developments in law and government that I have read about in the Bar Association Journal and other publications during the preceding twelve months;

b. enables me to rub elbows with the best thought (if such a thing can be done) in the branches of the law in which I am most interested; and especially, to keep in touch with the numerous unselfish activities of the Bar intended for the good, not of the Bar alone, but of all our people, such as legal aid, protection of our courts, and of the civil liberties of our people against unwarranted aggression, etc.

2. Not the least of the benefits is the fellowship with interesting personalities among the membership who would otherwise be only a name on a printed page or a signature on a typewritten letter.

Sincerely yours,

HENRY C. MEADER.

Erie, Pa.

Editor, ABA JOURNAL:

Probably a sufficient reason for my attending the Philadelphia convention of the American Bar Association is to be found in the fact that I am on the reception committee of the Pennsylvania Bar Association for that occasion.

If I may say so, your question, when addressed to one who has attended a number of conventions of the American Bar Association, should ask for reasons for staying away, rather than reasons for going to any American Bar Association convention. The sectional activities, the social contacts with first rate judges and lawyers from other parts of the country, the hospitality of the local members of the bar, are in themselves a sufficient justification for a journey of any length to attend an annual convention.

But there are more serious reasons for attending this year's meeting at Philadelphia, where American liberty was born. Without becoming trite, it is proper to say that the lawyers of America, traditionally, have been out in front whenever our fundamental rights are in jeopardy. Just now, we seem to be comfronted with a new and strange challenge to our way of life. While we are in the business of preparing to meet this challenge, it will be inspiring and confronted with a new and strange time, with the sort of men who will have much to do with carrying on that preparation and living up to that tradition.

Very sincerely yours,

CHAS. H. ENGLISH.

BAR ASSOCIATION NEWS

Georgia Bar Association

THE fifty-seventh annual meeting of the Georgia Bar Association convened at Macon, Georgia, May 23, 24, 25, 1940.

John L. Tye, Jr., president of the Association, delivered the president's address at the opening of the session on the subject of "A House United."

The annual address was made by the Hon. Hatton Sumners of Dallas, Texas, Chairman of the Judiciary Committee of the House of Representatives. His address dealt with the present trend of government and the shifting of government responsibility away from the people, away from the small units of government, away from the states, to federal bureaus. Mr. Sumners stated that we cannot afford to disregard the objective of nature, nor can we disregard the plan of nature, which is to develop people by having them grapple with difficulties. He stated that, if the people of the United States relied on the National Government entirely to govern, eventually they would lose the capacity to govern. His plea was for the return of governing to the people and by the people, and to preserve the governing capacity of the people to operate the government lest, the people having forgotten how to govern, a dictator would take charge.

Lucien P. Goodrich, of Griffin, spoke on the "Origin and Development of the Georgia Rule of Comparative Negligence."

On Friday afternoon Honorable Stanley A. Reese, of Dublin, read a paper on the subject of "Aspects of our Penal System" and D. H. Redfearn of Miami, Florida, President of the Florida Bar Association, spoke on "Progress of the Legal Profession." A. A. Lawrence, of Savannah, delivered an address on the subject of "Justice Wayne and the Dred Scott Case."

The annual banquet was held on Friday evening at the Hotel Dempsey. David S. Atkinson, of Savannah, acted as toastmaster, and addresses were made by Grady Gillon, of Macon, president of the Macon Bar Association; Earle Norman of Washington, Georgia, and D. H. Redfearn of Miami, Florida.

An address was made on Saturday morning by R. A. McLarty, Jr., representing the Junior Bar Section of the Georgia Bar Association, on the subject of "Exponents of Law."

Delightful entertainment was furnished by the Macon Bar Association and the meeting was a most successful one.

WILLIAM Y. ATKINSON
President, Georgia Bar Association

The following officers were elected for 1940-1941: William Y. Atkinson of Newnan, President; Paul F. Akin of Cartersville, Vice President; Chas. J. Bloch of Macon, Treasurer; John B. Harris of Macon, Secretary; Benning M. Grice of Macon, Assistant Secretary-Treasurer. Mr. John L. Tye, Jr., of Atlanta was elected to the House of Delegates of the American Bar Association.

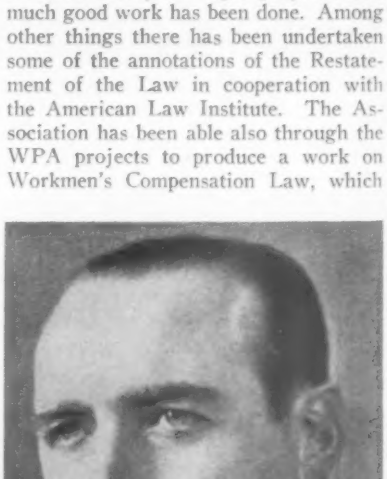
JOHN B. HARRIS,
Secretary.

New Jersey Bar Association

THE annual meeting of the New Jersey Bar Association at Atlantic City, May 31-June 1, closed one of the busiest years in the Association's history. The meeting was addressed by George A. Smathers, of Miami, Florida, who spoke on "Administrative Procedures"; Samuel Kaufman, of Newark, New Jersey, who spoke on "Is the Administrative Process a Fifth Column"; presidential address by Allen B. Endicott, Jr.; and annual banquet address by Hon. Lewis B. Schwellenbach, Senator from Washington and newly appointed United States District Court Judge, who spoke on "Fifth Column and Civil Liberties." New officers and directors for the ensuing year are: President, Sylvester C. Smith, Jr., of Newark; First Vice-President, Milton M. Unger of Newark; Second Vice-President, William J. Connor of Trenton; Third Vice-President, Augustus C. Studer, Jr., of Newark; Treasurer, Joseph J. Summerill, Jr., of Camden; Secretary, Emma E. Dillon of Trenton; and Directors, John O. Bigelow of Newark, David M. Klausner of Jersey City, and Forster W. Freeman, Jr., of Paterson.

The sections of the Association, six in number, were all active throughout the year. The sections are those devoted to Commercial Law, Corporation Law, Banking Law, Insurance Law, Municipal Law, and the Junior Section.

The New Jersey Bar Association is continuing its work in connection with the Works Progress Administration Projects. Several of these projects have already been undertaken and finished. The Association has heartily supported the idea of these projects, and therefore it has added many members of the profession who for financial reasons were compelled to be dependent on this kind of work. Every effort is made to have men work only on legal projects, and much good work has been done. Among other things there has been undertaken some of the annotations of the Restatement of the Law in cooperation with the American Law Institute. The Association has been able also through the WPA projects to produce a work on Workmen's Compensation Law, which



SYLVESTER C. SMITH, JR.
President, New Jersey Bar Association

is considered one of the best books on the subject.

One of the activities of the New Jersey association which has been most interesting is the development of a number of committees to meet with similar committees from various other associations, such as bankers, realtors, accountants, doctors, etc.

The unauthorized practice of law has received considerable attention. The association is sponsoring a bill in the legislature devoted to that topic, and although considerable opposition has been experienced there is a determined effort to bring about the passage of the act.

Legal Aid is receiving considerable attention, and much progress has been made by the association in this field.

Altogether it can be said that the New Jersey Bar Association is active in its efforts to keep itself useful to the public and to the members of the profession.

Texas Bar Association State Bar of Texas

APPROXIMATELY 2,000 lawyers gathered in Fort Worth, Texas, July 4-6 to attend the 59th and last session of the Texas Bar Association and the first annual session of the State Bar of Texas. During the meeting, the lawyers heard two distinguished out-of-state speakers, voted to dissolve the Texas Bar Association, and turned over the duties of the State Bar of Texas to Few Brewster, of Temple, President-elect. Other officers are L. Hamilton Lowe, of Corpus Christi, Vice President, and Wm. B. Carssow, of Austin, Secretary.

Wm. B. Carssow, executive secretary of the Texas Bar Association and secretary of the State Bar of Texas, reported that the membership of the voluntary association stood at 3,248, while over 7,800 Texas lawyers had registered last year in the State Bar.

At a luncheon honoring the judiciary, Justice W. O. Douglas of the United States Supreme Court and Charles A. Beardsley, President of the American Bar Association, were the principal speakers. Justice Douglas described experiments with the pre-trial system for expediting court procedure as "evidence of the awareness of your bar of its social responsibility." He declared that such a step would be progressive and economical.

Mr. Beardsley declared the United States is in need of enlightened leadership and that the legal profession provides the "social engineers" needed for the work.

Mr. Beardsley also spoke at the Friday session on "Legal Draftsmanship." The principal address of the entire session was made on Friday evening by Mr. Justice Douglas.

HON. FEW BREWSTER
President, State Bar of Texas

Pennsylvania Bar Association

FOUR hundred ninety-two members of the Pennsylvania Bar Association convened at Bedford Springs, Pennsylvania, on June 19th for the forty-sixth annual meeting of the Association. In addition to the members, one hundred four ladies were present.

President Gifford K. Wright in his message to the Association directed attention to the fact that in various national legal publications the Pennsylvania Bar has been depicted as one of "darkest hue" contrasted with the integrated states which were given a "lily whiteness." The detailed history of the bench and bar of Pennsylvania more than sustained President Wright's conclusion that Pennsylvania can in no sense of the word be classified as a "backward" state. The conclusion reached in the address was that Pennsylvania was too far advanced to require any such artificial stimulant as integration.

Suitable memorial resolutions were adopted in memory of Honorable Henry S. Niles and Honorable Robert von Moschzisker, past presidents of Pennsylvania Bar Association, who died during the past year.

The report of the Special Committee on Reorganization of the Association, presented by Mr. McCracken of Philadelphia, and the subsequent adoption of said report, marked a radical change in the work of the association. For some years it had been felt that with the rapidly increasing membership more members should participate in the actual work of the association. Consequently the section system was adopted in part for experimental purposes. The by-laws were amended so as to provide for the following sections:

Junior Bar Conference
Section on Criminal Law
Section on Industrial Property
Section on Municipal Law
Section on Real Estate Law
Section on Taxation.

At the Wednesday evening session Solicitor General Francis Biddle delivered the annual address. The Solicitor General scored attacks on aliens and quoted from a letter of Attorney General Jackson expressing disapproval of the bill now pending in Congress to deport Harry Bridges. In the course of his remarks the Solicitor General said that he had not noticed any governor of a state protest against the rising tide of petty persecution directed against aliens.

President Wright presided at the banquet held Thursday evening, which was attended by five hundred twenty-three persons. The speakers of the evening were Honorable William I. Schaffer, Chief Justice of the Supreme Court of Pennsylvania, and Dr. Paul Shipman Andrews, Dean of the College of Law of Syracuse University.

At the Friday morning session Honorable William M. Hargest, of Harrisburg, was elected President, Fred B. Gernerd, of Allentown, Vice-President, John McI. Smith, Secretary, Fidelity-Philadelphia Trust Company, Treasurer, and Barbara Lutz, Executive Secretary.

JOHN MCI. SMITH,
Secretary

Blank & Stoller

HON. WILLIAM M. HARGEST
President, Pennsylvania Bar Association

NOTES AND COMMENT

Bill of Rights Review

From Chicago Bar Association "Record," July, 1940.

IF YOU haven't seen the first number of the *Bill of Rights Review*, get hold of a copy at once. It is published by the Bill of Rights Committee of the American Bar Association with offices at 31 Nassau Street, New York City, for the purpose of disseminating "information generally concerning our constitutional liberties to the end that violations thereof may be the better recognized and proper steps taken to prevent or correct them." It will also serve as a medium of communication between the fifty or more committees of state and local bar associations in the field of civil rights throughout the United States.

"We firmly believe," says the foreword of this venture, "that the underlying problem in the safeguarding of constitutional liberties is the achievement of a sense of proportion . . . the claims of liberty and the claims of order must be held in a proper and desirable *balance*. It has been well said that the maintenance of free institutions depends upon a 'fine equilibrium' between anarchy and tyranny, between authority and freedom."

"Solitary Liveth the City"

The following editorial from a leading Canadian law magazine gives expression to a point of view existing in our neighbor to the North about what it calls "anti-British speeches by loud-mouthed American orators." It is interesting as a straw-in-the-wind showing how resentment toward the United States may be caused in neighboring American countries. It also gives a somewhat different touch to the discussion of the collapse of France as a democratic country.

MOST choristers at some time have taken part in the performance of Charles Gounod's "Gallia." Many of them no doubt wondered why this particular cantata, a setting of words describing the utter desolation of Zion, should be given this title and have accepted the explanation as an interesting historical fact. None of us would have thought even two months ago that France would again be under the heel of a merciless enemy and still less, that her Government would ever consent to a shameful peace, yet both of these have taken place.

It is idle to enquire into the reasons. There may have been treachery, there may have been disunion, there may have been over-confidence. Perhaps all of these were present. This, however, is something for historians to discuss. Yet, whatever the cause, France, like Poland, Belgium, Holland and Norway, is now a country whose chance of survival as an independent state depends in part on the strength of her chief ally, and also on the manliness of her exiled sons and her colonists. . .

There are certain elements even in our own country, who while they take care to say nothing directly disloyal, seek to create an atmosphere of defeat and hopelessness. They excuse the breach of faith of the Petain Government, give prominence to anti-British speeches by loud-mouthed American orators and minimize the efforts of the Free Countries to reform their lines and counter-attack. . . Above all, let no one weaken our cause by panic or despair. We are fighting for our lives, and, if we remember this, we shall win.

The Sherman Act and Legal Aid

[*Editorial Note: The following comment will be read with interest in connection with the article in our July issue, "Restraint of Trade," by Walter P. Armstrong.*]

NOW that professional organizations apparently must reckon with the Sherman Anti-Trust Act, just what activities to improve professional standards are permissible for bar associations?

Such is the question which seems to have been raised by the Supreme Court's refusal to review the American Medical Association case, a decision so broad as to be regarded as bringing legal professional activities within the scope of the Sherman Act.

Some suggestions as to the answer of the new problem confronting bar associations may be forthcoming in the fall when the Department of Justice expects to bring the medical case to trial in the District of Coumbia Federal District Court.

Inasmuch as the case involves the efforts of medical groups to prevent the establishment of a group health association, what the courts decide is likely to have an important bearing on what bar associations may legally do in the way of curbing or regulating the growth of low-cost legal bureaus and service experiments.

In the petition filed on behalf of the Association in which Supreme Court review was asked, it is stated that:

"The Bar Association, in its attempted widespread effort to improve its personnel, better its membership supervise law lists, cause the approval of law schools for student education and clarify and improve standards for admission to the bar, might well be subject to the same kind of prosecution (as the American Medical Association)."

Questions yet to be determined in the courts is whether professional organizations of doctors and lawyers may prohibit their memberships from accepting positions with medical and legal service projects.

—*American Law and Lawyers, June* 15.

Bar as Balance Wheel

IN these days of national "jitters" it is the duty of the bar to act as a balance wheel not alone in national policies but more especially in public sentiment. The right to free thought and free speech is the heritage of the American people and upon the shoulders of the lawyers rests the burden of the preservation of that heritage. In these days when "fifth column" activities are being sifted let us take the lead in seeing that that sifting is done fairly. Not only fairly, but completely. The bar must take the lead in demonstrating that freedom of speech and freedom of thought does not imply freedom to conspire for the overthrow of the established government. No government worthy of the name can tolerate such conspiracies, particularly when they are fostered by a foreign power. The danger however lies in the inability of the public to distinguish between such freedom and actual conspiracy. [South Dakota Bar Journal, July 1940.]

"Law Office Organization" Articles

THE four articles on *Law Office Organization*, by Reginald Heber Smith of Boston, which have appeared in the JOURNAL, have aroused an unusual amount of interest. Lawyers from all parts of the country have praised them and many requests for reprints have been received. In order that the JOURNAL may form some estimate of the number of reprints that might be wanted, we request that interested lawyers write us as promptly as possible. reprints of all four articles with appendix of forms will be available at a suggested price of *twenty-five* cents per copy.

Melville W. Fuller

Mr. Frank J. Loesch, the author of the following article, has been writing his Reminiscences in the Chicago Bar Association Record. They were first read before the Law Club of Chicago and are appearing under the title "The Chicago Bar in the Seventies and Eighties." Mr. Loesch is the recognized Dean of the active bar in Chicago, where he has been in continuous and vigorous practice for 66 years, and is head of one of the leading law firms. He was for years the active head of the Chicago Crime Commission, and has long been considered one of Chicago's leading citizens. The following excerpt is of more than local interest and will be appreciated by the bar of the country generally.

I BECAME intimately acquainted with Mr. Melville W. Fuller in 1887 when I was retained with him and Edwin Walker as counsel for Leslie Carter in the divorce suit brought by Mrs. Carter. He was a most excellent jury lawyer, but was not infrequently in equity cases.

He was often defendant's counsel in personal injury cases, but he was effective in every case I heard him in. His knowledge of jurors' minds was to me uncanny. In those years, previous to his going on the Bench of the Supreme Court, he had only one clerk, a son of Judge Booth, and was constantly busy. Going to his office one day I saw John W. Doane, who was a great fighter where his legal rights were concerned and who paid liberal fees with pleasure in such cases, just leaving Fuller's office. I heard Mr. Fuller say substantially: "No, I can't take any more; I have got to stop; I am going to stop; I am very sorry, but I must refuse, Mr. Doane, to take the case." Being immediately received, I inquired if Mr. Fuller was retiring from practice. He was astonished at the question and I repeated the remark I had heard at the door. He answered: "I am so busy it would be unfair for me to take any more business. It is difficult for me to take care of what I have now." I said that we young lawyers would be disinclined to turn away clients for that reason, remarking that I had not been that fortunate. His reply was that a lawyer who was honest and willing to work need never worry about getting sufficient business. I frequently saw him in Washington and also here after he became Chief Justice. He told me that Washington was not really home to him and that Chicago was and he always returned here with pleasure.

The greatest cases, I think, which came before the Supreme Court in his time were the income tax cases under the law passed in Cleveland's administration. It was sustained, except as to real estate income, by a vote of five to four. A rehearing was granted and it was then reversed and the whole law declared unconstitutional by a five to four vote. Mr. Justice Shiras changed his vote on the rehearing. The Chief Justice told me that the deluge of letters, protests and telegrams against the income tax law which reached every justice in the Supreme Court during the time when the case was under consideration and especially when the rehearing came up, exceeded anything that had ever been experienced by that court so far as he could learn. It was most unfortunate that the law was declared unconstitutional for it opened the door for the passing of the income tax amendment. No one thought at its passage that it would mean practical confiscation of large incomes by 1940.

While Mr. Fuller was not a profound lawyer, he was a very effective trial lawyer and a cautious, able counsellor, and very witty as well as companionable, and most courteous to his adversaries and the courts and to the lawyers who appeared before the Supreme Court. Newton Baker told me a story of him. When Fuller was about seventy-five years old he was being urged to retire. At that time, at a reception at his residence, he was observed meditatively standing before his portrait, and then nodding his head, he was heard to say: "There is a good deal of work in that old fellow yet."—*Chicago Bar Record*, July, 1940.

Moffett Studio

FRANK J. LOESCH

Professional Conduct and Advocacy*

The following book review taken from the "Madras [India] Weekly Notes," of April 15, 1940, touches on many topics that are familiar to American lawyers. The discussion of questions of professional ethics, and of bar association activities—coming as they do from a Bar on the other side of the world, and yet a Bar that lives under the Common Law like our own—is timely and suggestive.

THE lectures are entitled: "Professional Conduct and Advocacy." We would have appreciated the title "Canons of Conduct for the Legal Profession and Advocacy." The word "Canons" would have brought out the responsibilities of the Bar—the high aims of the law and the very high moral standards and lofty traditions in its practice, the restraints that are imposed upon lawyers to prevent the evils of free competition from attaching to the profession and to enforce on lawyers a sense of definite responsibility to their clients, to the court and to the public. It is very necessary that these onerous duties should be reiterated as often as possible to evoke a response in every lawyer's heart and to keep him always on the straight path of liberty chastened by discipline.

The book is a veritable treat on the subject it deals. The lectures are delivered with the author's usual thoroughness, terseness and directness. A genuine spirit breathes through the lectures as of one who has kept the professional ideals steadily before his eyes and tried to live them himself, though this may not be said of every successful lawyer.

The suggestions are so eminently helpful that a reading of the book will save the beginner from the many pitfalls likely to face him and pave the way for honorable success in the profession. Of the Bar, it has been well said that "the dismal waiting and watching for the opportunities that do not come is enough to thin the stoutest heart." The Bar is the most exalted and attractive of all the peaceful professions. Rightly, therefore, the author deals in the first chapter with the place of the lawyer in every civilized country and his responsibilities. The most brilliant and attractive of professions and almost a stepping stone to many high distinctions, it is the most exacting in its responsibilities both inside and outside. As has been truly emphasized by the lecturer in many places, character is the bedrock upon which any reputation in any pro-

*Lectures delivered by Rao Bahadur K. V. Krishnaswami Iyer to the apprentices-at-law at the instance of the Madras Bar Council.

fession has to be built and much more so in the legal profession which has to deal conscientiously with the rights as between third parties. The lawyer is an exceedingly indispensable limb of every progressive civilization and ordered society and the Bar is the bulwark of civil and criminal justice throughout the civilized world. A fearless Bar and an independent Bench has been considered the "keystone of the political fabric" of every true democracy. The lawyer is only a preventer of disputes and not a fomenter of them. The lawyer's ideal has always been service, disinterested service.

Professional ethics is nothing technical but is a mere application of the ordinary standards of common honesty and truthfulness. A sound character plus good taste will solve almost all problems of professional ethics. As the author stresses "the lawyer has no professional privileges but owes only duties to all—to himself, to the client, to the court and to the public. The legal profession is responsible for the enactment of proper laws, for safeguarding the liberty of the subject, and for advancing the constitution of the State.

The author has succinctly dealt with the necessary qualifications for forensic success; how the lawyer ought to equip himself morally and intellectually by being a lifelong student, how he ought to deal with the clients, how he ought to settle honorably his fees and how he ought to conduct himself and his cases, in court, not content with discharging broadsides of decided cases but diving deep into first principles, and how he ought to deport himself to his brother practitioners, in all, bearing in mind, the maintenance of one's own self respect, integrity and independence as a member of a learned but a jealous profession.

Professional partnerships among lawyers is yet another solution suggested. Certainly this will relieve some congestion among lawyers and will be to the advantage of the client and of the court. Indian temperament has yet to prove its adaptability for the necessary adjustments. Not many partnerships are working at present, but the few there are augurs a fair future. These apparent advantages apart, there is the possible disadvantage of one member bringing disrepute upon the whole partnership. The advocate in India suffers from both the disabilities of the Solicitor and the Barrister of England. Partnerships among Barristers in England are illegal. In India the advocate both pleads and acts and partnerships are hence not unthinkable. But they are to be condemned if they are to be founded upon the analogy of Solicitors to be erected into a business with a good-will and a consideration for formation of partnerships. Such things may not redound to the honor and the high ideals of the profession but will only reduce the alliances into trading partnerships. The difference between a Business organization and an Association of members of the Bar lies in the fact that the former are in the main concerned only with their own economic advantage and profit, while the latter have to put their public obligations first and their private advantage afterwards.

The lecturer also suggests that members of the legal profession should take to politics in the early years of their professional career in the present changed conditions of our Country, but how far this is prudent or practicable we have our doubts in a country torn by communal differences. Success at the Bar has not assumed a communal complexion and in the nature of things it cannot. There is a danger of one's political complexion affecting his career in the legal profession. In an autonomous and homegeneous country like England, the lawyer makes his mark in the profession first and then in the history of his country. The great lawyers have an equal opening in both the political and legal activities of their country.

In this otherwise exhaustive book, there appears only a very cursory reference to engaging sons and relatives of Judges. Recently in America a member of the Bar asked the Bar Committee to state the ethical limitations in a situation where several of the Judges in a country have sons or near relatives who are lawyers practicing in the court, the inquiring member stating that "occasionally a disappointed litigant whose case perhaps had no merit lays his defeat to the relationship between the presiding judge and the opposing counsel."

The opinion of the Committee was delivered in the following words: "A judge should studiously avoid wherever possible every situation that might reasonably give rise to the impression on the part of the litigants or of the public that his decisions were influenced by favoritism. While a Judge may not be precluded from sitting in a case in which a son or other relative is counsel, it is wise in such cases for the Judge to have another Judge to hear the case. It is not incumbent on a lawyer to refuse to accept employment in a case because it may be heard by his father or other relative. The responsibility is on the Judge not to sit in a case unless he is both free from bias and from the appearance thereof."

One thing affecting the professional morale is concerned with contingent fees. Views on this matter are somewhat divided in England and America. Though such a thing may not be improper in a solicitor, we agree with the author that such a step in an advocate will be highly demoralizing as partaking of champerty and of bargaining for a "share in the spoils." Such a conduct will only lower the prestige of the profession and will surely be abused.

In a book meant for apprentices, there was evidently no scope for the author to deal with the action and reaction of the Bench and the Bar, the influence of the one on the other to fix their relative standards of independence and integrity though here and there he has touched upon it. However much the Bar may reform itself and fix high standards they will all be futile without a corresponding attitude from the Bench. Our leaders have a large responsibility in making the Bench realize this position. There rests a grave duty on the leaders of the Bar to guard its independence from any onslaughts from the Bench or from the public. Here the Kernan incident in our own court and the Page incident in the Calcutta High Court where the official leaders of the profession came boldly out to uphold the dignity and the independence of the Bar come to our mind.

It has been a truism in England where the judiciary is recruited only from the Bar that the Bench is regarded as but an extended Bar. But even though things are somewhat different in our country, the ideals that govern the English Bench and Bar have formed our ideal. It is this character of British justice that is at the bottom of the impartial administration of justice in India. Lawyers are the main-stay of the popularity of British justice. Hence the Bench has its correlative duties to the Bar. Both must jealously uphold the tradition for independence and impartiality of the other. A proper respectful attitude of one to the other is so very essential for the progress of the society on rightful lines. It has been truly said in an American Journal that the "Organized Bar should not hesitate to insist that only those who possess the essential qualifications for judicial service, intellectual and moral courage, and the integrity, impartial capacity for work, legal learning and experience (at the Bar) are elevated and kept upon the Bench."

We have no hesitation in recommending this book couched in an elegant and simple style to every lawyer on the threshold of his career and to other members of the Bar to find out ways for solving the many problems set out in the book; and even to the lay public to appreciate the position of the much maligned Bar.

PRE-TRIAL PROCEDURE*

By Justice William O. Douglas
Associate Justice United States Supreme Court

"A bar association should be greater than the individual lawyer. It should embody not the individual ambition of the practitioner, but the point of view of society with regard to the profession."

THOSE observations of Woodrow Wilson contain the working creed of all organized efforts on the part of our profession towards the ideal of social justice. They also emphasize the tremendous responsibilities on all of us for the continuous improvement of the legal system. On its effective functioning rest many of the hopes of democracy. Its responsiveness to change, its efficiency, its integrity will create an abiding faith in the virtues of the democratic processes.

Progress and achievement along these lines call for diligent reappraisal of traditional methods, lest routine and old mental habits blind us to flaws which are obvious to all except the initiate.

It is not by the cases which catch the popular fancy that a valuation of our judicial and administrative work can be made. Analysis of trends in constitutional adjudications, [and] restatements of the work of our appellate courts contain only a minor fraction of the material relevant to any inquiry into the workings of our system of administration of justice.

Of far greater interest and importance to the average citizen is what happens to his claim or his defense before the magistrate, trial court, or administrator. At these points does the law come intimately into contact with the individual. It is there that day by day the average man's sense of justice will be outraged or satisfied. It is there that delay, technicalities, ineptitude, and prejudice will take their greatest toll in confidence.

No legal system can long survive, in the sense of commanding public respect and confidence, which does not comport with the people's shrewd, native sense of justice. Nor should it survive. The law is not a game; it is an arbitral process. It will never be perfect because it is human. But the striving for that goal is part of the destiny of our profession.

In that regard, your efforts to expedite and improve the administration of the business of the courts through perfection of the pre-trial procedure are noteworthy. I read with great interest the recent recommendation of your committee for a state-wide pre-trial procedure on a uniform basis in all civil cases, particularly those requiring juries.

That progressive movement is a frontal attack on the law's delays. It holds great promise of eliminating some of the formalism which often obscures rather than reveals the truth. It should facilitate the substitution of clear discussion for pettifogging. It should go far toward introducing some of the directness and informality of the administrative proceeding in the place of sheer red tape. The end result should be greater public confidence that the law is an instrument of justice rather than a game of wits.

In this connection certain statistics furnished me by Judge Laws of the United States District Court for the District of Columbia are of interest. Due to the use of the pre-trial procedure in that court substantial acceleration of the civil calendar has been accomplished. Between October 1, 1939, and May 31, 1940, the jury calendar was accelerated 8 months, the period elapsing between the time a jury case was placed on the trial calendar and the date it would be reached for final trial being reduced from 23 months to 15 months. For non-jury cases there was an acceleration of 13 months during the same period, the reduction in time being from 22 months to 9 months. In the judgment of Judge Laws a large part, though not all, of the acceleration was due to pre-trial procedure.

One feature of the practice in that court apparently has been a substantial increase in compromise settlements. According to Judge Laws the increase of compromise settlements between September 18, 1939, and May 31, 1940, over the same preceding period was substantially 505 cases.

From these various current experiments substantial improvements in the efficiency of the courts should result. You are to be congratulated on your vigorous pursuit of that objective. It is evidence of the awareness of your bar of its social responsibility.

*Address before Judicial Section, Texas Bar Association, Fort Worth, Texas, July 4, 1940.

Note: Due to unavoidable delays, the JOURNAL received the manuscript of this address from Justice Douglas' Secretary in Washington the day the JOURNAL went to press.—ED.

The House of Lords as a Judicial Body

A Recent British Estimate

There is some current criticism by certain American lawyers about the present "attitude" of our Supreme Court. A typical example is to be found in an article entitled, "Business Without Precedents" in the August Atlantic Monthly by Mr. Arthur A. Ballantine of the New York Bar. [The JOURNAL has just been favored with a two-page "Press Release" of this article.] The keynote of the article is expressed in its first sentence:

> "The change in attitude of the Supreme Court has produced what is aptly referred to as a new Constitution."

In this connection the following comment from the July issue of The Scottish Law Review, a leading British law journal, is of interest. The British review commends "the liberality of view" shown by the present House of Lords. It particularly mentions, and with obvious approval, the fact that the House of Lords "is not always or very often hampered in the view it takes, by previous decisions."

The Scottish Law Review says:

". . . Viscount Simon, the Lord Chancellor, has been sitting continuously in the House of Lords which has had a very fair list of appeals to deal with. His presidency has been much admired; his courtesy to counsel has been much appreciated. Indeed there has been a pleasant atmosphere in the House, very different, if reports speak truly, from those of days long gone by. Again and again the proposal to abolish the House of Lords as a judicial body has been mooted but no such suggestion has been heard for a long time; indeed the attitude of the House in its decisions has been marked by a liberality of view which people who think only of the House as a legislative chamber and remember its past history are inclined to attribute to it. Of course it is not always or very often hampered in the view it takes by previous decisions. It cannot, it is true, reverse its own pronouncements but, just like other tribunals, it can 'distinguish' them, if not enamored of their results."

This recent British estimate clearly indicates that the House of Lords of England, as a judicial body, is keeping pace with the "attitude" of our Supreme Court.

*War as Seen Through the Eyes of an American Lawyer**

Conditions in Europe have been one of my chief interests for the past two or three years. I have been thrown into them in all sorts of ways and services. I served two years in the Department of State as one of the executives of that department at the end of the Hoover administration. I was, when I first left college, a newspaper correspondent. I have known Europe on and off all my life with some intimacy.

I was in Germany last Fall. Indeed I chose a trip to Germany deliberately in the middle of July with the feeling that something was going to break loose there before the fall was over.

On the night before the Soviet-German pact was announced, I wandered by accident into a little German university town. I stumbled on a close-shaved fellow of about forty who was teaching radio to a group of three boys. He sat down with me on the steps and we talked for an hour in the gathering twilight.

Our conversation led immediately into the subject of what Germany's aims and wants were. He said in the course of half an hour something like this, "The German people have developed the greatest civilization in the world. Our home life, our poets, our scientists, our philosophers,"—and he strung them out in a long list—"There is nothing like them anywhere in the world. There are nowhere cities so trim and neat; there is nowhere so much fine literature and music. There is nowhere so balanced an outlook on life as in Germany."

He referred, of course, to the history of Prussia. This powerful state, which developed under Frederick the Great, finally took over one after another the neighboring states and provinces of German-speaking people. Brandenberg was the heart of modern Prussia, the heart of modern Germany and of the great Reich, which was cemented by the capture of Austria.

He said, "The military people in the Mark of Brandenberg provided the turtle-shell, the carapace, the steel, the iron for the soft civilization of the north. Now we have a destiny, a mission."

"There is no peace for Europe by any of the old processes," he went on. "Germany is surrounded with quarrelling, primitive people who insist on their primitive ways, their primitive religions, their primitive atttudes. They crowd on us. Some of them are always growing stronger and some of them weakening. They are always quarreling and have been so since we have any record. There will never be peace in Europe until some one nation, as the Romans did years ago in the *pax Romano*, some one nation in a *pax teutonica*, in a German peace, proceeds to make them all alike and to impress on them a single culture and a single civilization."

"Well," I said, "you have tried it before. What about the Czechs? For centuries they have been oppressed.

He said, "If need be, the Czechs will be murdered. It is quite possible to slaughter all the males in the Czech population who fight off our civilization."

"Well," I said, "the Czechs are not alone. Name the other nations."

He named them, the Slovaks, the Slovenes, the Poles, the Bulgarians, Rumanians, Hungarians. He said, "They must all be absorbed and be subdued." "Your Western Nation in America—we will let you run the Western Hemisphere and subdue it to one culture."

I said, "What about Great Britain?"

There was a Holtz machine, one of those little static electric machines with a wheel, nearby. He said, "The British Empire is flying apart through centrifugal force like that machine would if we spun it too fast. It will not last long."

I left Germany and went to England. There from the courts, the clubs in Mayfair, from the St. James and the Burlington Club, down to the maids and the taxi drives, from the men who kept the locks on the canals, always I heard the same thing. They said, "We can't stand this any longer."

What is all this to us or we to it? What does this mean from American standpoints for our present or our future? Where can we turn for guidance and what should guide us? Let me deal with the simpler problems first. Here are my own suggestions for what they are worth in this early moment of the struggle.

There would be no doubt in my mind that if Germany were to win this war, it would mean the control of the seas by a German naval mechanism aimed at selling goods at the point of the bayonet in the way that that was accomplished in the 16th century by Spain and England. It is now being attempted in China by Japan. They would no longer tolerate the free flow of commerce on the seas. We know the plans. They are announced and written in black and white and printed in a dozen documents. Germany would attempt at least to the limits of its strength to control the commerce of the world to feed to the veins of its own dominion.

Now let me turn for a moment to one or two other phases of the problem as I see it from the standpoint of the lawyer. The great disturbing force in the modern world is invention. This is the very machine to which we have referred. Nearly all I can see that is important in the modern world, in thought, in philosophy, in political movement, in social alteration, is produced by the machine. As in the case of Communism, almost every political movement that we have seen and particularly the disturbances in this country today, seems to be traceable to the effects of the efficiency of machine production on the distribution of wealth, on employment, on the means for security and peace on which our social happiness rests. The machine reaches a new crest of effect in the war which is now impinging on us across the seas.

The experience of the world today in Russia, in Japan, in Germany, in Italy perhaps, certainly the larger part of the experience of the world indicates that recourse to the state as a solution for these economic problems results in two things. The first of them is the stultification of individual initiative, indeed the cessation and almost paralysis of the economic process. The second is the concentration of power in the hands of a few men who are no more able to sustain concentration of power than men have been since the first days of which we have knowledge. Out of this concentration of the power in the state, from this effort to find in a totalitarian state a solution for our woes, comes not only war, but undoubtedly in the end pestilence. Already we see paralysis of the economic life of the people over whom those states can rule.

We are lawyers. There are in the theory and practice of the law two or three basic ideas. But deep hidden in the background which we sometimes forget is the conception that behind the law there is always force. The conflict in Europe exposes the roots of the law and of the state. It exposes something that we had forgotten, that a single element of force in an unarmed and pacific community can control and dominate that community. In the end we will never retain peace until the force which is now running riot in Europe is organized. When it is organized as we have organized it in our own communities, as the frontier towns organized it in this country a century ago, we can for the first time hope for solutions. When they come, I suggest to you they will be the lawyers' solutions.

**Excerpts from an address by James Grafton Rogers, Master of Timothy Dwight College, Yale University, member of American Bar Association, before the Ohio State Bar Association, April 26, 1940. Ohio Bar Association Report, July 22, 1940.*

Efficiency in Government

Democracies versus Dictatorship

THE following item is one of the principal Notes appearing in the July number of that famous English law review, The Law Quarterly Review. The editor of that Journal is Professor A. L. Goodhart, D.C.L., LL.D., Professor of Jurisprudence in the University of Oxford.

"On May 22, 1940, in less than four hours, the Emergency Powers (Defence) Act, 1940, passed through all the necessary stages in both Houses of Parliament and received the Royal Assent. . . . Of this Act *The Times* said in its leading article (May 23): 'At this grave moment a united nation feels no hesitation or misgiving, though the new Act . . . comes near to suspending the very essence of the Constitution as it has been built up in a thousand years. Our ancient liberties are placed in pawn for victory; nothing less than the destruction of Hitlerism will redeem them.' Although these words contain a certain element of truth, especially as regards the sacrifices which the nation is prepared to make, it is important to realize that England, even during this crisis, has remained a country of law and order and has rejected the dogmas of the totalitarian State. It is true that the widest powers are given to His Majesty, but these cannot be exercised in an arbitrary fashion; there is still the essential safeguard that the Defence Regulations must be made by Orders in Council, and that every Order in Council must be laid before Parliament as soon as possible. If either House resolves within the next twenty-eight days that the Order be annulled then it ceases to have effect. There is no danger that our ancient liberties will be swept away even though for the moment we are governed by Orders in Council rather than by statutes, for, although the form of the law may have altered, the spirit remains unchanged."

Application to America

This comment from a high authority is pertinent for us in America, particularly at this time when important and drastic Statutes are likewise being passed by our Federal Government, for the purpose of national defense. What is here quoted is of interest for many reasons, but two reasons in particular may be suggested:

(1) It proves that Democracies may act with the efficiency and speed of dictatorships, even in the making of the gravest decisions when the necessity for prompt action exists.

(2) It suggests in a convincing way the answer to the fanatical talk we sometimes hear in this country about "retaining our civil rights" in times of the gravest emergency like these. With us in America we may paraphrase what is said about England:

> "There is no danger that our ancient liberties will be swept away, even though for the moment we are governed by [administrative rules] rather than by statutes, for although the form of the law may have altered, the spirit remains unchanged."

Qualifying Administrative Law Practitioners

"THE large number of laymen who practice before administrative law agencies has long been a source of concern to the bar and its associations, national and local. Year after year, bar association committees on the unauthorized practice of law and on administrative law have resolved and recommended on this subject but no appreciable progress has been made. It is therefore heartening to learn that Attorney General Robert H. Jackson's Committee on Administrative Procedure is giving attention to this problem. The American Bar Association's Committee on the Unauthorized Practice of Law recently urged the committee to study the question of admission to practice before administrative agencies and to make recommendations as to what should be done.

"It might be questioned whether a stronger stand should not be taken for the automatic admission to practice before all agencies to be accorded to members of the bar. However, the steps suggested are in the right direction. What is more, there is reason to believe that the Attorney General's committee will accomplish some tangible and desirable results. A committee of a governmental agency, such as the Supreme Court or the Attorney General, is in a better position to carry out progressive measures than are the bar association committees."—New Jersey Law Journal, July 25, 1940.

To Members of the American Bar Association:

We print below a membership application form for your convenience, in the event that you have a friend or associate whom you wish to propose for membership.

Applications filed during the period between July 1 and September 30 should be accompanied by initial dues of $8.00, or $4.00 if the applicant has been admitted to the bar less than five years.

Application for Membership
AMERICAN BAR ASSOCIATION
1140 North Dearborn Street
Chicago, Illinois

Date and place of birth .....
Original admission to practice .....
State Year
Other states in which admitted to practice (if any) .....
Bar Associations to which applicant belongs .....
.....
White ☐ Indian ☐ Mongolian ☐ Negro ☐
Name .....
Office Address .....
Street City State
Home Address .....
Street City State
Endorsed by ..... Address .....
Check to the order of American Bar Association for $..... is attached.

Chandler to Speak in Chicago

HENRY P. CHANDLER, director of the administrative office of the United States courts and past president of the Chicago Bar Association, will be the principal speaker at the opening of the Friday afternoon session of the 1940 annual conference of the National Association of Referees in Bankruptcy, which will be held at the Drake hotel in Chicago July 25-27.

Commercial Law League Elects Harold B. Doyle President

HAROLD B. DOYLE, Youngstown, O., an active member of the American Bar Association, on July 24, was unanimously elected president of the Commercial Law League of America for the coming year. He succeeds Carroll Teller, Chicago.

The Commercial Law League, holding its 46th annual convention at the Drake Hotel here, also elected the following officers: Vice president, Judge Abraham Lieberman, Union City N. J.; recording secretary, Alfred J. Blake, Boston, Mass.; treasurer, Thad M. Talcott, South Bend Ind. (re-elected).

President Doyle was born near Pittsburgh, Pa., Dec. 6, 1888. He moved to Youngstown in 1902.